Supreme Court, U.S.
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No. 96

IN THE

Supreme Court of the United States

October Term, 1996

WORD OF FAITH WORLD OUTREACH CENTER CHURCH, *ET AL.*,

PETITIONERS,

VS.

DIANE SAWYER, CAPITAL CITIES/ABC INC., *ET AL.*,

RESPONDENTS,

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI

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39 pp

QUESTIONS PRESENTED

I.

WHETHER THE COVERAGE OF THE CIVIL RIGHTS ACT OF 1871, 42 U.S.C. §1985(3) IS LIMITED SOLELY TO CASES INOLVING *RACIAL* BIAS OR WHETHER THE STATUTE REACHES CONSPIRACIES, SUCH AS THE ONE HERE, SPECIFICALLY INTENDED TO SHUT DOWN A CHURCH AND ITS MINISTRIES WITH THE AID OF STATE OFFICIALS BECAUSE OF *RELIGIOUS* BIGOTRY?

II.

WHETHER, AS HELD BY THE COURT OF APPEALS, PREDICATE ACTS OF RACKETEERING ACTIVITY—NO MATTER HOW MANY, OF WHAT CHARACTER, OR EXTENDING OVER WHAT PERIOD OF TIME—MAY FORM A "PATTERN OF RACKETEERING ACTIVITY" ONLY WHEN THEY ARE PART OF SEPARATE ILLEGAL SCHEMES?

LIST OF PARTIES

Pursuant to Rule 24.1(b) the following listed persons or entities have an interest in the outcome of this case.

Plaintiffs-Petitioners:

Word of Faith World Outreach Center Church, Inc., a dissolved corporation on behalf of its members

Word of Faith World Outreach Center Church, an unincorporated Church on behalf of its members

Respondents:

Diane Sawyer

Robbie Gordon

Kelly Sutherland

Jeff Cooke

Capital Cities/ABC Inc.

American Broadcasting Companies, Inc.

ABC News, Inc.

The Trinity Foundation, Inc.

Ole Anthony

Harry Guetzlaff

Powell Holloway

Bank Doe Defendants (one or more unknown John/Jane Doe employees of Commercial Bank & Trust Co., Tulsa, Oklahoma)

IDM Doe Defendants (one or more unknown John/Jane Doe employees of Internal Data Management, Tulsa, Oklahoma)

Church Doe Defendants (one or more unknown John/Jane Doe employees of Petitioners)

Joyce-Pollard Doe Defendants (one or more unknown John/Jane Doe employees of Joyce and Pollard, Tulsa, Oklahoma)

Counsel for Petitioners:

John L. Ross, Rhonda Johnson Byrd, Thompson, Coe, Cousins & Irons, L.L.P., Dallas, Texas

J.C. Joyce, Joyce and Pollard, Tulsa, Oklahoma

Counsel for Respondents:

Floyd Abrams, Susan Buckley, Edward P. Krugman, and David G. Januszewski, Cahill Gordon & Reindel, New York, New York (counsel for Sawyer, Capital Cities/ABC, Inc., American Broadcasting Companies, Inc., ABC News, Gordon, Sutherland, and Cooke)

Frank Charles Veccella and Annabel Lugo Hoffman, Jackson & Walker, L.L.P., Dallas, Texas (counsel for Sawyer, Capital Cities/ABC, Inc., American Broadcasting Companies, Inc., ABC News, Gordon, Sutherland, and Cooke)

Richard A. Rohan, Barbara M.G. Lynn, and Sally A. Longroy, Carrington, Coleman, Sloman & Blumenthal, L.L.P., Dallas, Texas (counsel for Trinity Foundation, Inc., Anthony, Guetzlaff, and Holloway)

Others:[1]

A.H. Belo Corp.

WFAA-TV, Inc.

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[1]These persons and entities were named as original defendants in the district court. They were later dropped as parties, were not parties to the appeal to the Fifth Circuit, and are not Respondents before this Court.

Bill Brown

Ed Housewright

Steve Blow

Ed Bark

Paul C. Watler, Robert E. Davis, Charles A Gall, Steven E. Fox, and Michael Stewart, Jenkens & Gilchrist, Dallas, Texas, counsel for A.H. Belo Corp., WFAA-TV, Inc., Bill Brown, Ed Housewright, Steve Blow, and Ed Bark.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	v
INDEX OF AUTHORITIES	viii
OPINIONS BELOW	1
JURISDICTION	1
STATUTES INVOLVED	1
STATEMENT OF THE CASE	1
A. INTRODUCTION:	1
B. THE RELEVANT FACTS:	4
1. The Parties:	4
a. The Church:	4
b. The Trinity Respondents:	5
c. The ABC Respondents:	6
2. The §1985(3) Conspiracy, and the RICO Pattern of Racketeering Activity:	7

Page

3. Proceedings Below: 10

REASONS FOR GRANTING THE WRIT 12

I.

***CERTIORARI* SHOULD BE GRANTED BECAUSE THE COURT OF APPEALS' DECISION IS CONTRARY BOTH TO THIS COURT'S PRIOR DECISIONS AND THE LEGISLATIVE HISTORY OF §1985(3), AND CREATES AN UNWARRANTED SPLIT IN THE CIRCUITS CONCERNING THE SCOPE OF AN IMPORTANT CIVIL RIGHTS STATUTE.** 12

A. THE COURT OF APPEALS' POSITION THAT §1985(3) IS LIMITED SOLELY TO *RACIALLY*-BASED CONSPIRACIES IS CONTRARY TO PRIOR DECISIONS OF THIS COURT. 12

B. THE COURT OF APPEALS' DECISION IS CONTRARY TO THE CLEAR LEGISLATIVE HISTORY OF THE STATUTE. 13

C. THE POSITION OF THE COURT OF APPEALS IS CONTRARY TO THAT ADOPTED BY EVERY OTHER CIRCUIT THAT HAS ADDRESSED THE ISSUE, THEREBY CREATING A SPLIT IN THE CIRCUITS 14

Page

D. GRANTING THE WRIT WOULD PROVIDE THE COURT WITH THE OPPORTUNITY TO SETTLE AN UNRESOLVED QUESTION CONCERNING THE SCOPE OF THIS IMPORTANT CIVIL RIGHTS STATUTE. 16

II.

CERTIORARI SHOULD BE GRANTED TO REAFFIRM *H.J., INC.*, AS THE APPROPRIATE TEST FOR DETERMINING THE EXISTENCE OF A RICO "PATTERN OF RACKETEERING ACTIVITY," PREVENT THE REEMERGENCE OF MULTIPLE INCONSISTENT STANDARDS, AND INSURE EQUAL TREATMENT OF RICO PLAINTIFFS AND DEFENDANTS. 17

A. THE COURT OF APPEALS ERRONEOUSLY SUBSTITUTED A "PATTERN" DEFINITION THAT IS AT ODDS WITH *H.J., INC.*, AND THAT RESURRECTS JUDICIAL LIMITATIONS ON RICO PREVIOUSLY REJECTED BY THIS COURT. 18

B. THE CHURCH'S COMPLAINT WOULD HAVE BEEN UPHELD IN OTHER CIRCUITS PROPERLY APPLYING *H.J., INC.* 22

CONCLUSIONS 23

INDEX OF AUTHORITIES

CASES:	PAGE(S)
Action v. Gannon, 450 F.2nd 1227 (8th Cir. 1971)	15
Armco Indust. Credit Corp. v. SLT Warehouse Co., 782 F.2nd 475 (5th Cir. 1986)	18
Arnold v. Tiffany, 359 F.Supp. 1034 (N.D. Cal.), *aff'd*, 487 F.2nd 216 (9th Cir. 1973), *cert. denied*, 415 U.S. 984 (1974)	14-15
Barticheck v. Fidelity Union Bank/First Nat. State, 832 F.2nd 36 (3rd1987)	20
Bates v. City of Little Rock, 361 U.S. 516 (1960)	8
Bray v. Alexandria Women's Health Clinic, 505 U.S. 263 (1993)	12-16
Buckley v. Valeo, 424 U.S. 1 (1976)	8
Burns-Toole v. Byrne, 11 F.3rd 1270 (5th Cir.), *cert denied*, 129 L.Ed.2nd 814 (1994)	16
Calcasieu Marine Nat'l Bank v. Grant, 943 F.2nd 1453 (5th Cir. 1991)	11
Central Presbyterian Church v. Black Liberation Front, 303 F.Supp. 894 (E.D. Mo. 1969)	15

CASES:	PAGE(S)
Colombrito v. Kelly, 764 F. 2nd 122 (2nd Cir. 1985)	15
Combs v. Bakker, 692 F.Supp. 596 (W.D. N.C. 1988), *rev'd*, 886 F.2nd 673 (4th Cir. 1989)	20
Conley v. Gibson, 355 U.S. 41 (1957)	1
Cooper v. Molko, 512 F.Supp. 563 (N.D. Cal. 1981)	15
Cox v. Admin. United States Steel & Carnegie, 17 F.3rd 1386 (11th Cir. 1994), *cert. denied*, 130 L.Ed.2nd 784 (1995)	21
Delta Truck & Tractor, Inc. v. J.I. Case Co., 855 F.2nd 241 (5th Cir. 1988), *cert. denied*, 489 U.S. 1079 (1989)	11
Diamonds Plus, Inc. v. Kolber, 960 F.2nd 765, 769 (8th Cir. 1992)	23
Eilers v. Coy, 582 F.Supp. 1093 (D. Minn. 1984)	15
Emanuel v. Barry, 724 F.Supp. 1096 (E.D. N.Y. 1989)	15
Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963)	8

CASES:	PAGE(S)
Green v. State Bar of Texas, 27 F.3rd 1083 (5th Cir. 1994)	16
Griffin v. Breckenridge, 403 U.S. 89 (1971)	12-16
Harrison v. KVAT Food Mgmt., Inc., 766 F.2nd 155 (4th Cir. 1985)	16
Hishon v. King & Spalding, 467 U.S. 69 (1984)	1
H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229 (1989)	11, 18-22
Howell Petroleum Co. v. Weaver, 776 F.2nd 1302 (5th Cir. 1985), *reh'g denied*, 780 F.2nd 1198 (5th Cir. 1986)	23
Ikuno v. Yip, 912 F.2nd 306 (9th Cir. 1990)	22
In re Burzynski, 989 F.2nd 733 (5th Cir. 1993)	11
Jews for Jesus v. Jewish Comm. Rel. Council of N.Y., 968 F. 2nd 286 (2nd Cir. 1992)	14
LeBlanc-Sternberg v. Fletcher, 781 F.Supp. 261 (S.D. N.Y. 1991), *aff'd*, 67 F.3rd 412 (2nd Cir. 1995)	14
Loux v. Rhay, 375 F.2nd 55 (9th Cir. 1967)	10

CASES:	PAGE(S)
Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)	23
Mandelkorn v. Patrick, 359 F.Supp. 692 (D. D.C. 1973)	15
Marlowe v. Fisher Body, 489 F. 2nd 1057 (6th Cir. 1973)	15
NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958)	9
National Organization for Women, Inc. v. Scheidler, 510 U.S. 249 (1994)	6, 10, 12-22
Rankin v. Howard, 527 F.Supp. 976 (D. Ariz. 1981)	15
Roe v. Abortion Abolition Society, 811 F. 2nd 931 (5th Cir.), *cert. denied*, 484 U.S. 848 (1987)	16
Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985)	18, 22
Shields Enterprises, Inc. v. First Chicago Corp., 975 F.2nd 1290 (7th Cir. 1992)	21-22
St. Agnes Hospital of Baltimore, Inc. v. Riddick, 668 F.Supp. 478 (D. Md. 1987)	15
Swistock v. Jones, 884 F.2nd 755 (3rd Cir. 1989)	21

CASES:	PAGE(S)
Tabas v. Tabas, 47 F.3rd 1280 (3rd Cir.) (*en banc*), *cert. denied*, 132 L.Ed.2nd 275 (1995)	21
Taylor v. Gilmartin, 686 F.2nd 1346 (10th Cir. 1982), *cert. denied*, 459 U.S. 1147 (1983)	13-15
Ticor Title Ins. Co. v. Florida, 937 F.2nd 447 (9th Cir. 1991)	21-22
Tilton v. Marshall, 925 S.W.2nd 672 (Tex. 1996, *orig. proceeding*)	2
Tilton v. Moyé, 869 S.W.2nd 955 (Tex. 1994, *orig. proceeding*)	2
Tilton v. Richardson, 6 F.3rd 683 (10th Cir. 1993), *cert. denied*, 127 U.S. 218 (1994)	15
United Brotherhood of Carpenters and Joiners v. Scott, 463 U.S. 825 (1983)	12-17
United States v. Busacca, 936 F.2nd 232 (6th Cir.), *cert. denied*, 502 U.S. 985 (1991)	21-22
United States v. Nabors, 45 F.3rd 238 (8th Cir. 1995)	21
United States v. Pelullo, 964 F.2nd 193 (3rd Cir. 1992)	21

CASES:	PAGE(S)
United States v. Stodola, 953 F.2nd 266 (7th Cir.), *cert. denied*, 121 L.Ed.2nd 63 (1992)	21
United States v. Turkette, 452 U.S. 576 (1981)	18, 21
Ward v. Connor, 657 F. 2nd 45 (4th Cir. 1981), *cert. denied*, 455 U.S. 907 (1982)	15
Wilson v. First Houston Investment Corp., 566 F.2nd 1235 (5th Cir. 1978), *vacated*, 444 U.S. 559 (1979)	10
Word of Faith World Outreach Center Church v. Morales, 787 F.Supp. 689 (W.D. Tex. 1992), *rev'd*, 986 F.2nd 962 (5th Cir. 1993)	2-4, 17
Word of Faith World Outreach Center Church, Inc. v. Sawyer, 90 F.3rd 118 (5th Cir. 1996)	*passim*
STATUTES:	
18 U.S.C. §1341	8
18 U.S.C. §1344	8
18 U.S.C. §1346	8
18 U.S.C. §1503	9
18 U.S.C. §1962	2

18 U.S.C. §2314	9
18 U.S.C. §2315	9
26 U.S.C. §501(c)(3)	5
42 U.S.C. §1985(3)	2-16
TEX. CORP. ACT, art. 1396-7.12	4
OTHER AUTHORITIES:	
Fed. R. Civ. P 12(b)(6)	4

OPINIONS BELOW

The opinion of the district court is unreported, but is reproduced in the *Appendix To Petition For Certiorari* ("*Appendix*"), pp. 17a-22a.[2] The decision of the U.S. Court of Appeals for the Fifth Circuit, *Word of Faith World Outreach Center Church, Inc. v. Sawyer*, 90 F.3rd 118 (5th Cir. 1996), is also reproduced in the *Appendix*, pp. 1a-15a. The Fifth Circuit's decision was issued on August 7, 1996.

JURISDICTION

Under 28 U.S.C. §1254(1), the Court has discretionary jurisdiction to review the decision of the Fifth Circuit by a writ of *certiorari*.

STATUTES INVOLVED

The statutes involved, 42 U.S.C. §1985, and 18 U.S.C. §§1961, *et seq.*, are set forth in the *Appendix*, pp. 23a-26a.

STATEMENT OF THE CASE

A. INTRODUCTION:

This case presents the Court with the opportunity not only to correct the erroneous decisions of the district court and Fifth Circuit, but also to definitively answer substantial lingering and long-standing questions about the scope of two different important federal statutes—the 1871 CIVIL RIGHTS ACT and RICO—and to resolve splits in the circuits concerning those questions. Further, because Petitioners' claims were dismissed under Rule 12(b)(6), *Fed. R. Civ. P.*, there are no factual issues in which the Court need immerse itself, but purely questions of federal law concerning the meaning of these two statutes.[3]

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[2]References to the *Appendix* will be to specific pages therein, *e.g.*, "App. p. 34a."

[3]*See, e.g., Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (the court must accept facts alleged in the complaint as true, and view them in the light ***footnote continued on next page . . . .***

This case was filed on November 11, 1993, by Petitioners (hereafter, "the Church") on behalf of their members for injuries suffered as a result of a religiously motivated conspiracy by Respondents to shut down the Church and its television ministry with the aid of state officials. Using knowingly false accusations and "evidence" manufactured by Respondents, Respondents sought to entice state officials to indict members of the Church, and successfully induced state officials to violate the constitutionally protected First Amendment rights of the Church, its pastor, and Church members to the free exercise of religion. *See Word of Faith World Outreach Center Church v. Morales*, 787 F.Supp. 689, 691 and 698-702 (W.D. Tex. 1992) (specifically finding investigation of the Church by the Texas Attorney General—an investigation instigated by Respondents—violated First Amendment rights of Church members), *reversed on other grounds*, 986 F.2nd 962 (5th Cir. 1993).[4] *See also Tilton v. Marshall*, 925 S.W.2nd 672 (Tex. 1996, *orig. proceeding*) (*mandamus* granted to bar trial judge from compensating plaintiffs for allegedly unanswered prayers, and to overturn order to produce tithing records); *Tilton v. Moyé*, 869 S.W.2nd 955 (Tex. 1994, *orig. proceeding*) (*mandamus* granted to overturn trial court's order, in violation of First Amendment, to produce Church membership information). Respondents were also successful in closing down the Church's television ministry, resulting in the loss of employment and in personal financial hardship for approximately 800 Church employees and their families, and in significantly reducing the Church's membership and outreach ministries. *See Word of Faith*, 90 F.3rd at 121; App. pp. 31a, 151a, and 181a.

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most favorable to the plaintiff); *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) (district court must deny motion to dismiss "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.").

[4]The Church expressly alleged this investigation—and others—were instigated by Respondents in furtherance of their conspiracy. *See e.g.*, App. pp. 213a-216a, 226a (¶32), and 239a-248a.

To achieve their goals of shutting down the Church and its ministries, over the course of more than two years, Respondents engaged in multiple unlawful acts and RICO predicate acts, culminating in three nationally televised broadcasts of *PrimeTime Live* between November, 1991,[5] and July, 1992, containing numerous knowingly and maliciously false, fraudulent, and misleading statements concerning the Church, its pastor, and its ministries.

On March 18, 1994, the district court granted Respondents' motions to dismiss the civil rights claim on the ground §1985 does not proscribe conspiracies motivated by *religious* animus. On February 8, 1995, the district court also dismissed the RICO claim on the ground the Church had not sufficiently alleged a "pattern of racketeering activity."

On August 7, 1996, the Fifth Circuit affirmed dismissal of the §1985 claim, stating, without explanation: "We decline the Church's invitation to extend the reach of section 1985(3) to include conspiracies motivated by religious, as opposed, to racial animus." 90 F.3rd at 124. The court also affirmed dismissal of the RICO claims for failure to sufficiently allege a "pattern of racketeering activity," expressly conceding, however, that "[t]he law in other circuits might have allowed this case to proceed further." 90 F.3rd at 123 n. 4.

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[5]Television ratings "sweeps" month.

B. THE RELEVANT FACTS:[6]

1. The Parties:

a. The Church:[7]

The Church is a Christian church based in Farmers Branch, Texas, a Dallas suburb, with a membership—before Respondents' illegal conduct—numbering in the thousands. *See Word of Faith World Outreach Ctr. Church v. Morales*, 986 F.2nd at 963 (12-13,000 members; 500,000 on mailing list at the time of the events).[8] At the time of the events giving rise to this lawsuit, the Church had approximately 8,000 members in the Dallas area, with average Sunday worship attendance of 3,000-5,000. The Church also reached hundreds of thousands of followers through its nationally broadcast television ministry. The Church's pastor was, and remains, Reverend Robert Tilton.

One of the central beliefs of the Church and its members is the importance and necessity of tithing and making vows to God through the Church. Among other things, the Church teaches and its members believe financial support is required by the Bible and must be freely given. The Church and its members believe the expressions of faith and trust as manifested by financial vows to God, through the Church, are rewarded, and the faithful will prosper physically, spiritually,

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[6]Because the Church's claims were dismissed under Rule 12(b)(6), *Fed. R. Civ. P.*, the statement of facts is a summary taken from the Church's pleadings and its RICO case statement, filed with the district court at the court's direction. For a detailed statement of the facts, *see Plaintiffs' Third Amended Complaint* (App. pp. 29a-130a), *Plaintiffs' Second Amended RICO Case Statement* (App. pp. 131a-217a), and *Plaintiffs' Original Complaint* (App. pp. 220a-253a).

[7]*See* App. pp. 152a-154a.

[8]When the events giving rise to this lawsuit began, Petitioners' legal form of organization was Word of Faith World Outreach Center Church, Inc., a Texas non-profit corporation. That entity later transferred all its assets to Word of Faith World Outreach Center Church, an unincorporated Church, and then dissolved. Word of Faith World Outreach Center Church, Inc., is authorized to maintain this action, notwithstanding its dissolution, under art. 1396-7.12(A)(1) and (2), TEX. CORP. ACT. For ease of reference, both entities are collectively referred to as "the Church."

and financially. The class of churches subscribing to this interpretation of the Holy Scriptures is often referred to as "prosperity" churches. The Church and its members believe God answers prayers and God wants all His people to prosper spiritually, physically and financially.[9]

b. The Trinity Respondents:[10]

Ole Anthony is the founder, President, and member of the Board of Directors of the Trinity Foundation, Inc. ("Trinity Foundation"). The Trinity Foundation, a Texas non-profit corporation, purports to have been formed for the purpose of "designing, producing, presenting, operating, and supporting Christ-centered communications projects." In fact, Anthony is a man fueled by two burning passions: religious bigotry towards the Church and its television ministry, and a deep desire for personal promotion through use of the media. The Trinity Foundation serves as his vehicle to achieve both objectives. *See* App. pp. 38a-45a and 154a-161a.[11]

By his own admission, Anthony has waged a "holy war" against Reverend Tilton, accusing Reverend Tilton in testimony before the House Ways and Means Committee of "franchising" his ministry and operating a "heavenly lottery." In denunciation of television ministries generally—and Reverend Tilton specifically—Anthony has regularly appeared on talk radio and tabloid television, *e.g.*, *Current Affair, Inside Edition, Entertainment Tonight, The Maury Povich Show*, and through the Trinity Foundation has held numerous press conferences and given countless interviews to print media to vent his invective against the Church and its

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[9]The Attorney General of Texas has acknowledged that the Church constitutes a *bona fide* Church, and that its religious beliefs are sincerely held. *See Word of Faith World Outreach Center Church, Inc. v. Morales*, 986 F.2nd at 963, n. 1. The Church holds a non-profit tax exempt status under § 501(c)(3) of the INTERNAL REVENUE CODE.

[10]*See* App. pp. 37a-48a and 154a-161a.

[11]Respondents Harry Guetzlaff and Powell Holloway were employees, board members, or directors of the Trinity Foundation. Collectively, the Trinity Foundation, Anthony, Guetzlaff, and Holloway are referred to as "the Trinity Respondents."

ministry. In simple terms, for years, Anthony's aim has been to shut down the Church and its ministry. *See National Organization for Women, Inc., v. Scheidler*, 510 U.S. 249, 127 L.Ed.2nd 99, 108-111 (1994) (motive to shut down abortion clinics is sufficient motive to support RICO claims; economic motive not required). In his discussions with Respondent Diane Sawyer, Anthony accused the Church of "blasphemy,"[12] and in describing the goal of his unholy alliance with the ABC Respondents, Anthony stated (App. pp. 41a, 157a, and 227a):

> My prediction is that Word of Faith won't be around in four years, and the land where the church once stood will be a parking lot. . . . It'll be covered with cracks with weeds growing through them, and birds of flight will nest in the remains of the building.

ABC itself recognized Anthony's religious prejudice against the Church, with one of ABC's producers writing in her notes that Anthony was on a "crusade" against Reverend Tilton "in the name of Christ." App. pp. 41a, 158a, and 162a.[13]

c. The ABC Respondents:[14]

Diane Sawyer was the anchor of the three *PrimeTime Live* broadcasts. Gordon and Sutherland, were the producers, and Cooke the cameraman. The corporate ABC defendants were the entities which funded the activities of Sawyer, Gordon, Sutherland, Cooke, the Trinity Respondents, and the Doe Defendants,[15] produced the broadcasts, and by whom the individual ABC Respondents were employed. The individual

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[12]App. pp. 40a and 157a.

[13]Anthony's motivations were not entirely theological, however. He also hoped to use his "crusade" against the Church and his association with the ABC Respondents to propel himself into a job as host of a syndicated radio talk show. App. pp. 41a-42a and 158a-160a.

[14]*See* App. pp. 48a-57a and 161a-162a.

[15]As described in more detail in the pleadings and the RICO case statement, in the course of their activities Respondents enlisted the aid of a number of presently unidentified John or Jane Does. *See* App. pp. 57a-64a and 162a-163a.

ABC Respondents shared Anthony's goal of shutting down the Church. For example, Sawyer stated she "was appalled" when she saw Reverend Tilton on TV, and vowed "He needs to be stopped." App. pp. 48a and 161a. Likewise, out-takes from "undercover" video tapes made by Cooke and Gordon in the Church sanctuary during Sunday morning worship captured the pair's disdain for the Church and its tenets, evidenced by their repeated derogatory, vulgar and obscene language, and their discussions of sexual prowess and sexual response. App. pp. 50a-52a, 73a, and 161a-162a. *See also* App. p. 228a.

2. The §1985(3) Conspiracy, and the RICO Pattern of Racketeering Activity:

In pursuit of his crusade against the Church, for years Anthony had unsuccessfully sought indictments against Church officials.[16] Beginning at least as early as May, 1991, Anthony conspired with the other Respondents to finally achieve his objective through numerous RICO predicate and other unlawful acts. Respondents knowingly manufactured false evidence and allegations of fraud and deceit by the Church, used the manufactured "evidence" to further induce and encourage state, local and federal officials to investigate the Church, indict Church officials—including Reverend Tilton—revoke the Church's property tax exemptions, and revoke the Church's tax exempt status, and then on three separate occasions broadcast their knowingly false allegations to a national television audience.[17]

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[16]In a taped out-take, Anthony told Sawyer: "I'm the incoming president of the Texas Grand Jury Association, and I've served on many grand juries, and *we have tried several . . . three or four different instances to get an indictment*, and it's obvious—because it's commercial fraud—but always the DA is without courage or something takes place where they won't proceed that final step, that little oomph! Well, this program can be the little oomph! that would cause a whole lot of these charlatans to be investigated." App. pp. 40a and 156a (emphasis added).

[17]Respondents instigated investigations of the Church by, *e.g.*, the Dallas County District Attorney's Office, the Dallas County Central Appraisal District, the Texas Attorney General's Office, the U.S. Postal Service, the FBI, and the IRS. App. pp. 88a-89a. Despite probing investigations by these agencies, not ***footnote continued on next page . . . .***

The ABC Respondents *knew* the allegations of fraud and corruption presented to state, local, and federal officials and broadcast to the nation were false.[18] Handwritten notes made before the broadcasts—believed to have been authored by Sutherland—stated: *"No fraud to be had on this guy[19]—can have fun w/ him though."* App. pp. 32a, 116a, 150a, 190a, and 259a (copy of the actual notes).

In carrying out their objectives, Respondents' unlawful acts and RICO predicate acts included, *inter alia*:[20]

- obtaining—perhaps through bribery—the cooperation of one or more employees of a federally insured bank that processed Church donations to steal numerous items of mail, donations, and other property directed to the Church, but in possession of the bank, and falsifying bank records to conceal the multiple thefts;[21]
- obtaining—perhaps through bribery—the cooperation of one or more employees of the data processing firm that maintained Church records concerning membership, mailings, and donations to steal one or more computer disks containing confidential and constitutionally protected[22] Church membership information;[23]

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one criminal charge or complaint has been filed against the Church, its pastor, or any of its employees relating to the matters alleged in the broadcasts. App. p. 151a.

[18]Knowledge of falsity and malice were specifically alleged. *See, e.g.*, App. pp. 32a (¶¶4-5), 70a (¶1(a)), 73a (¶1(b)), 121a (¶19(c)), and 124a (¶5(c)).

[19]Reverend Tilton.

[20]*See generally* App. pp. 91a-128a and 182a-196a.

[21]BANK FRAUD, 18 U.S.C. §§1344 and 1346 (defrauding federally insured bank of the loyal services of employees); MAIL FRAUD, 18 U.S.C. §1341 (unlawfully taking mail matter from the mail). App. pp. 57a-59a, 95a-96a, 183a, 196a-197a, and 231a (¶38).

[22]*See, e.g., Buckley v. Valeo*, 424 U.S. 1 (1976) (identity of financial contributors constitutionally protected); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963) (identity of members); *Bates v.*
footnote continued on next page . . . .

- transporting the stolen computer disk(s) from Oklahoma to New York,[24] where Gordon paid to have the disk(s) decoded;[25]
- stealing from the offices of the Church's lawyers, Joyce & Pollard, confidential telephone logs of privileged attorney-client communications;[26]
- in violation of federal wiretap laws, surreptitiously recording portions of confidential phone conversations between Church prayer ministers and persons making prayer requests, and then stealing some of the prayer requests;[27]
- enlisting—perhaps through bribery—the cooperation of one or more Church employees to steal mail directed to the Church and other Church property,[28] and transporting the stolen property in interstate commerce;[29]
- filing false affidavits of Anthony, Guetzlaff, and Holloway with a federal district court;[30]

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footnote continued from previous page . . . .
City of Little Rock, 361 U.S. 516 (1960) (same); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958) (same).

[23]App. pp. 60a-62a, 70a-71a, 175a, and 196a-198a.

[24]INTERSTATE TRANSPORTATION OF STOLEN GOODS, 18 U.S.C. §2314; RECEIPT OF PROPERTY STOLEN FROM INTERSTATE COMMERCE, 18 U.S.C. §2315. App. pp. 104a-107a and 186a.

[25]App. p. 260a (copy of the invoice from the data processing service, and Gordon's personal check in payment of the invoice). Neither the disk nor the data have ever been returned to the Church.

[26]App. pp. 63a-64a, 88a, 175a, and 198a.

[27]App. pp. 87a-88a, 108a-109a, and 174a-175a.

[28]App. pp. 61a-62a, 173a-174a, and 197a-198a.

[29]INTERSTATE TRANSPORTATION OF STOLEN GOODS, 18 U.S.C. §2314; RECEIPT OF PROPERTY STOLEN FROM INTERSTATE COMMERCE, 18 U.S.C. §2315. App. pp. 124a-126a and 194a.

[30]OBSTRUCTION OF JUSTICE, 18 U.S.C. §1503. App. pp. 127a-128a, 164a-166a, and 195a-196a.

- numerous other mail and wire frauds.[31]

3. Proceedings Below:

On November 11, 1993, the Church filed suit on the civil rights violations. App. pp. 220a-258a. While Respondents' motions to dismiss that claim were pending, and following this Court's January, 1994, decision in *National Organization for Women, Inc. v. Scheidler*, *supra*, the Church filed a *First Amended Complaint* adding the RICO claim.

On March 18, 1994, the district court dismissed the civil rights claim, holding that conspiracies based on religious animus did not fall within the prohibition of §1985(3). Almost a year later, the district court dismissed the RICO claims contained in the Church's *Third Amended Complaint*, on the ground the Church had failed to allege a "pattern of racketeering activity." App. pp. 19a-21a.[32]

The Fifth Circuit affirmed. Concerning the Civil Rights Act claim, without any explanation whatsoever, the Fifth Circuit simply stated: "We decline the Church's invitation to extend the reach of section 1985(3) to include conspiracies motivated by religious, as opposed, to racial animus." 90 F.3rd at 124.

Concerning the RICO claim, the court held that the Church failed to plead a "pattern of racketeering activity." Specifically, while acknowledging this Court's decision in

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[31]App. pp. 91a-95a and 109a-126a.

[32]The §1985(3) claim is omitted from the *Third Amended Complaint* because—over the Church's objections—the district court would not allow that claim even to remain in the Church's pleadings after it had been dismissed, *citing Wilson v. First Houston Investment Corp.*, 566 F.2nd 1235, 1238 (5th Cir. 1978) ("[W]e hold that plaintiff, by filing an amended complaint after a dismissal with leave to amend, was not barred from raising on appeal the correctness of the dismissal order."), *vacated on other grounds*, 444 U.S. 559 (1979). The Church sought to keep the civil rights claim in its amended pleadings solely to insure that dismissal of the civil rights claim was preserved for appellate review. *See Loux v. Rhay*, 375 F.2nd 55, 57 (9th Cir. 1967) ("By filing an amended complaint, plaintiff waives any error in the ruling to [dismiss] the original complaint.").

H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229 (1989), the court stated (90 F.3rd at 123):

> It is unnecessary to delve into the arcane concepts of closed-end or open-ended continuity under RICO. [Three prior decisions of the Fifth Circuit][33] make clear that where alleged RICO predicate acts are part and parcel of a single, otherwise lawful transaction, a "pattern of racketeering activity" has not been shown.[34] In this case, the alleged predicate acts occurred during the production and airing of *PrimeTime* broadcasts concerning Tilton and his Church. The alleged acts were all part of a single, lawful endeavor—namely the production of television news reports concerning a particular subject. We agree with the district court that the Church has failed to plead a "continuity of racketeering activity, or its threat." *H.J., Inc.*, 492 U.S. at 241, 109 S.Ct. at 2902.

Citing conflicting cases from the Sixth, Seventh, and Ninth circuits, the court of appeals conceded, however (90 F.3rd at 123 n. 4):

> [t]he law in other circuits might have allowed this case to proceed further. . . . The precedents of this circuit concerning continuity are consistently different from these cases.

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[33] *In re Burzynski*, 989 F.2nd 733 (5th Cir. 1993); *Calcasieu Marine Nat'l Bank v. Grant*, 943 F.2nd 1453 (5th Cir. 1991); *Delta Truck & Tractor, Inc. v. J.I. Case Co.*, 855 F.2nd 241 (5th Cir. 1988), *cert. denied*, 489 U.S. 1079 (1989).

[34] Ironically, in *Delta Truck*, the court specifically assumed a "pattern of racketeering activity" *was* sufficiently alleged. 855 F.2nd at 243

REASONS FOR GRANTING THE WRIT

I.

CERTIORARI SHOULD BE GRANTED BECAUSE THE COURT OF APPEALS' DECISION IS CONTRARY BOTH TO THIS COURT'S PRIOR DECISIONS AND THE LEGISLATIVE HISTORY OF §1985(3), AND CREATES AN UNWARRANTED SPLIT IN THE CIRCUITS CONCERNING THE SCOPE OF AN IMPORTANT CIVIL RIGHTS STATUTE.

A. THE COURT OF APPEALS' POSITION THAT §1985(3) IS LIMITED SOLELY TO *RACIALLY*-BASED CONSPIRACIES IS CONTRARY TO PRIOR DECISIONS OF THIS COURT.

Section 1985(3) requires the intent of the illegal conspiracy be to deprive "any person or class of persons of the *equal* protection of the laws, or of *equal* privileges and immunities under the laws." This Court has held that §1985(3) is *not* limited to racially motivated conspiracies. Rather §1985(3) requires only "that there must be some racial, *or perhaps otherwise class-based, invidiously discriminatory animus* behind the conspirators' actions." *Griffin v. Breckenridge*, 403 U.S. 89, 102 (1971) (emphasis added). *Griffin* found that requirement satisfied by allegations the conspirators had stopped plaintiffs on the highway, prevented their travel, and beat them because of their race, without defining the outer reaches of the statute.

Twice, since *Griffin*, this Court has had the opportunity to define the scope of other-than-race class-based invidious discriminatory intent that would be encompassed within §1985(3). *See Bray v. Alexandria Women's Health Clinic*, 505 U.S. 263 (1993); *United Brotherhood of Carpenters and Joiners, Local 610 v. Scott*, 463 U.S. 825, 828-29 (1983). In each case, the Court found the "class" to which the plaintiffs purported to belong did not constitute the sort of other-than-racial class encompassed by §1985(3). In *Carpenters*, the Court held that "conspiracies motivated by bias towards

others on account of their *economic* view, status, or activities[,]" were not within the reach of §1985(3) (emphasis original). In *Bray*, the Court held that, "'[w]omen seeking abortions' is not a qualifying class." 122 L.Ed.2nd at 46.

The Court has never, however, rejected or retreated from its original interpretation in *Griffin* that §1985(3) encompasses other-than-race class-based conspiracies. Rather, the Court merely held on the facts in *Carpenters* and *Bray*, the "classes" there presented were not the sort protected by §1985(3). Indeed, in *Bray*, the Court expressly refused to reach the question whether "women in general" constituted a qualifying class under § 1985(3). 122 L.Ed.2nd at 46.

Likewise, the Court has never rejected the views of Justices O'Connor, Stevens, and Blackmun that §1985(3) is not limited to race-based conspiracies, and clearly prohibits conspiracies based on *religious* animus. *See Bray*, 122 L.Ed.2nd at 78 (Stevens, J., dissenting: "The question left open in *Griffin*—whether the coverage of §1985(3) is limited to cases involving racial bias—is easily answered. The text of the statute provides no basis for excluding from its coverage any cognizible class of persons who are entitled to the equal protection of the laws."); *Carpenters*, 463 U.S. at 853 (O'Connor, J., dissenting; emphasis added: "[C]ertain class traits, such as race, *religion*, sex, and national origin, *per se* meet [§1985(3)'s] requirement . . ." emphasis added).

B. The Court Of Appeals' Decision Is Contrary To The Clear Legislative History Of The Statute.

Griffin, *Carpenters*, and *Bray* each made specific reference to the oft-quoted remarks of Senator Edmunds—Senate floor manager of the legislation—in suggesting the sorts of other-than-race class-based animus §1985(3) might reach. *Griffin v. Breckenridge*, 403 U.S. at 102 n. 9; *Carpenters*, 463 U.S. at 836-37; *Bray*, 122 L.Ed.2nd at 63 (Souter, J., concurring) and 96 (O'Connor, J., dissenting). In those oft-quoted remarks, Senator Edmunds stated [*see, e.g., Taylor v. Gilmartin*, 686 F.2nd 1346, 1357 (10th Cir. 1982), *cert. denied*, 459 U.S. 1147 (1983) (emphasis added)]:

> We do not undertake in this bill to interfere with what might be called a private conspiracy growing out of a neighborhood feud or one man or set of men against another to prevent one getting an indictment in the State courts against men for burning down his barn; but, if in a case like this, it should appear that this conspiracy was formed against this man because he was a Democrat, if you please ***or because he was a Catholic, or because he was a Methodist,*** or because he was a Vermonter, . . . then this section could reach it.

"Such language clearly encompasses an 'irrational and odious class discrimination based on national origin or religion.'" *Taylor v. Gilmartin*, 686 F.2nd at 1357, *quoting*, *Arnold v. Tiffany*, 359 F.Supp. 1034, 1036 (C..D. Cal.), *aff'd on other grounds*, 487 F.2nd 216, 218 (9th Cir. 1973), *cert. denied*, 415 U.S. 984 (1974).[35]

C. The Position Of The Court Of Appeals Is Contrary To That Adopted By Every Other Circuit That Has Addressed The Issue, Thereby Creating A Split In The Circuits.

Cases in the Second, Fourth, Sixth, Eighth, Tenth, and District of Columbia Circuits have each interpreted §1985(3) to reach conspiracies based on religious bigotry. For circuit court decisions, *see LeBlanc-Sternberg v. Fletcher*, 67 F.3rd 412, 426-27 (2nd Cir. 1995) (involving claims by Orthodox Jews; "[Section 1985(3)] is applicable only if the plaintiff can show that 'some racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators' actions.' . . proor that the defendants' impetus was the plaintiffs' religion suffices."), *affirming* 781 F.Supp. 261, 269 (S.D. N.Y. 1991) ("[R]eligious-based discrimination is clearly within the ambit of this particular statute."); *Jews for Jesus v. Jewish Comm. Rel. Council of N.Y.*, 968 F.2nd 286, 291 (2nd Cir. 1992) ("Several courts, including this one, have

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[35]It is also worth noting that the legislation that became what is now §1985(3) was known as the Ku Klux Klan Act. The Klan's bigotry and prejudice against religious groups in addition to Blacks—particularly Jews and Catholics—is well-documented historical fact.

defined 'class-based animus' to include discrimination based on religion."); *Colombrito v. Kelly*, 764 F.2nd 122, 130-31 (2nd Cir. 1985) (membership in the Unification Church); *Taylor v. Gilmartin*, 686 F.2nd at 1357-58 (10th Cir.; membership in "the Old Catholic Church");[36] *Ward v. Connor*, 657 F.2nd 45, 48 (4th Cir. 1981), *cert. denied*, 455 U.S. 907 (1982) (membership in the Unification Church); *Marlowe v. Fisher Body*, 489 F.2nd 1057 (6th Cir. 1973) (§1985(3) action by Jewish employee against employer for discrimination on the basis of religion); *Action v. Gannon*, 450 F.2nd 1227 (8th Cir. 1971) (§1985(3) action allowed by church members against protesters for violation of freedom of assembly and worship). For district court opinions, *see Emanuel v. Barry*, 724 F.Supp. 1096, 1100-1101 (E.D. N.Y. 1989) ("[T]his Court concludes that anti-Semitic animus is actionable under section 1985(3)."); *St. Agnes Hospital of Baltimore, Inc. v. Riddick*, 668 F.Supp. 478, 482-83 (D. Md. 1987) (Roman Catholic hospital); *Eilers v. Coy*, 582 F.Supp. 1093, 1099-1100 (D. Minn. 1984) (Disciples of the Lord Jesus Christ); *Rankin v. Howard*, 527 F.Supp. 976, 977 (D. Ariz. 1981) ("The statute affords protection to one who has suffered injuries motivated by invidiously discriminatory animus toward members of a religious group."); *Cooper v. Molko*, 512 F.Supp. 563, 568-71 (N.D. Cal. 1981); *Arnold v. Tiffany*, 359 F.Supp. at 1036 (§1985(3) includes discrimination based on national origin or religion); *Mandelkorn v. Patrick*, 359 F.Supp. 692, 697-98 (D. D.C. 1973) (Children of God); *Central Presbyterian Church v. Black Liberation Front*, 303 F.Supp. 894, 899-900 (E.D. Mo. 1969) (conspiracy to deprive members of Central Presbyterian Church of right to freedom of worship actionable under §1985(3)).

The Fifth Circuit in this case stands alone in opposition to this weight of authority, excluding religious groups from the protection of §1985(3) and limiting the statute to race-based

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[36]Another panel of the Tenth Circuit later questioned *Taylor v. Gilmartin*, but did so on grounds that a conspiracy to influence state officials, even if motivated by religious animus, was not within the scope of §1985(3). *See Tilton v. Richardson*, 6 F.3rd 683 (10th Cir. 1993), *cert. denied*, 127 L.Ed.2nd 218 (1994).

conspiracies. *See, e.g., Green v. State Bar of Texas*, 27 F.3rd 1083, 1088 n. 8 (5th Cir. 1994) (racial animus is essential element of §1985(3) claim). Ironically, nearly a decade ago, the Fifth Circuit acknowledged this weight of authority, but expressly reserved ruling on the question whether §1985(3) reached religiously-based conspiracies. *See Roe v. Abortion Abolition Society*, 811 F.2nd 931, 934 (5th Cir.), *cert. denied*, 484 U.S. 848 (1987) ("The circuit courts of appeal have consistently held that religious ill-will is one of the class-based biases covered by §1985(3)."). Likewise, in *Burns-Toole v. Byrne*, 11 F.3rd 1270, 1275-76 (5th Cir.), *cert denied*, 129 L.Ed.2nd 814 (1994) the Fifth Circuit refused to decide whether §1985(3) applied to religious discrimination. Squarely presented with the issue in this case, the Fifth Circuit panel here offered no explanation whatsoever for rejecting this Court's decisions in *Griffin*, *Carpenters*, and *Bray*, the legislative history of the statute, and the compelling weight of authority from the other circuits.

D. Granting The Writ Would Provide The Court With The Opportunity To Settle An Unresolved Question Concerning The Scope Of This Important Civil Rights Statute.

Griffin, a case involving black plaintiffs, did not require the Court to define the precise scope of class-based invidious discriminatory conspiracies prohibited by §1985(3). *Id.*, n. 9:

> We need not decide, given the facts of this case, whether a conspiracy motivated by invidiously discriminatory intent other than racial bias would be actionable under the portion of §1985(3) before us. *Cf. Cong. Globe*, 42nd Cong., 1st Sess. 567 (1981) (remarks of Senator Edmunds).

In *Carpenters* and *Bray*, the Court limited its decisions to the facts and the nature of the "classes" presented in those cases, once again reserving ruling on the precise scope of the statute. *See also Burns-Toole v. Byrne*, 11 F.3rd at 1275-76, n. 25 ("There is little doubt that the reach of §1985 poses an interesting question" *citing Griffin*. "Subsequent decisions [*Carpenters* and *Bray*] have refused to delineate [§1985's] outside boundaries."); *Harrison v. KVAT Food Mgmt., Inc.*,

766 F.2nd 155, 157-59 (4th Cir. 1985) (acknowledging "considerable controversy" over scope of §1985(3), and listing the conflicting cases). This case precisely presents the Court with the opportunity to definitively answer the question whether religion is a protected class under §1985, and to prevent the split in the circuits created by the Fifth Circuit's opinion in this case. At a time when church burnings have become a pressing national concern, the Court should not hesitate to clearly answer "yes" to that question.[37]

II.

CERTIORARI SHOULD BE GRANTED TO REAFFIRM *H.J., INC.*, AS THE APPROPRIATE TEST FOR DETERMINING THE EXISTENCE OF A RICO "PATTERN OF RACKETEERING ACTIVITY," PREVENT THE REEMERGENCE OF MULTIPLE INCONSISTENT STANDARDS, AND INSURE EQUAL TREATMENT OF RICO PLAINTIFFS AND DEFENDANTS.

On four different occasions this Court has flatly rejected suggestions to impose artificial judicial restrictions on the plain, sweeping language of the RICO statute. *See National Organization for Women, Inc. v. Scheidler*, *supra* (RICO

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[37]In addition to class-based discriminatory animus, §1985(3) also requires *either* that: (1) the conspiracy be "aimed" at a right that is subject to private, as well as official encroachment; *or* (2) the state is involved in the conspiracy; *or* (3) "that the aim of the conspiracy is to influence the activity of the State." *Carpenters*, 463 U.S. at 830. *See also* §1985(3) ("If two or more persons . . . for the purpose of depriving, either directly *or indirectly* . . . ." [emphasis added]). This requirement is satisfied in this case because one of the goals of the conspiracy was to influence state officials to take action against the Church in violation of Church members' First Amendment rights, and to secure indictments of Church officials based on evidence manufactured by Respondents as part of the conspiracy, which was known to be false. *See* App. pp. 72a (¶III(C)(1)(g)), 213a-216a, 226a (¶32), 228a (¶34), 230a-231a (¶37), and 239a-248a. *But see Tilton v. Richardson*, *supra*. As noted previously, Respondents were partially successful in their goal. *See Word of Faith World Outreach Center Church v. Morales*, *supra*.

does not require any "economic" motivation); *H.J. Inc. v. Northwestern Bell Tel. Co.*, *supra* ("pattern of racketeering activity" does not require multiple schemes); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985) (civil RICO does not require prior criminal conviction of perpetrators or proof of "racketeering injury" in addition to injuries flowing from commission of predicate acts); *United States v. Turkette*, 452 U.S. 576 (1981) (RICO is not limited to "legitimate" enterprises, but reaches "illegitimate" ones as well). Ignoring its own admonition that courts should be "reluctant to inject another judicial construct into a statute that we [have been] commanded to construe broadly[,]"[38] the Fifth Circuit, nevertheless, imposed yet another artificial, judicial limitation on the scope of RICO that finds no support in prior decisions of this Court or the text of the statute, and which revives limitations previously rejected by this Court.

A. THE COURT OF APPEALS ERRONEOUSLY SUBSTITUTED A "PATTERN" DEFINITION THAT IS AT ODDS WITH *H.J., INC.*, AND THAT RESURRECTS JUDICIAL LIMITATIONS ON RICO PREVIOUSLY REJECTED BY THIS COURT.

The Court granted *certiorari* in *H.J., Inc.*, precisely to resolve the conflict in the circuits, the "plethora of different views" concerning RICO's "pattern" requirement, and develop a "meaningful concept" of "pattern of racketeering activity." 492 U.S. at 235-36. Rejecting both the restrictive "multiple schemes" interpretation and the liberal "two-related-predicate-acts-is-sufficient" approach to the "pattern" requirement, this Court defined the proper test for determining whether RICO predicate acts constitute a "pattern" (492 U.S. at 239-242; emphasis original):

> [T]o prove a pattern of racketeering activity a plaintiff or prosecutor must show that the racketeering

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[38] *Armco Indust. Credit Corp. v. SLT Warehouse Co.*, 782 F.2nd 475, 481-82 (5th Cir. 1986).

> predicates are related, [39] *and* that they amount to or pose a threat of continued criminal activity. . . .
>
> . . . What a plaintiff or prosecutor must prove is continuity of racketeering activity, or its threat, *simpliciter*. . . .
>
> "Continuity" is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition. . . . A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement . . . . Often a RICO action will be brought before continuity can be established in this way. In such cases, liability depends on whether the *threat* of continuity is demonstrated.

Characterizing the *H.J., Inc.*, open-ended/closed-ended test as "arcane," the court of appeals simply refused to apply it. Rather, the court adopted its own inventive standard, holding that admittedly "related" predicate acts—no matter how many, of what character, or extending over what period of time—do not constitute a "pattern of racketeering activity" "where [the] alleged RICO predicate acts are part and parcel of a single, otherwise lawful transaction . . . ." 90 F.3rd at 123. The court's refusal to apply the *H.J., Inc.*, standard is without justification, and once again—by the Fifth Circuit's own admission—exacerbates an unwarranted split in the circuits.

The approach adopted by the Fifth Circuit in this case resurrects the "multiple-scheme" approach expressly rejected in *H.J., Inc.*, by insulating RICO predicate acts where they "are part and parcel of a *single* . . . transaction." For reasons identical to those expressed by the Court in *H.J., Inc.*, the approach taken by the court of appeals is unsupported by the

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[39] Respondents do not contest that the predicate acts alleged by the Church are *related*. 90 F.3rd at 122.

text or legislative history of the statute, and injects unacceptable uncertainty and inconsistency into the application of RICO.

First, "the text of the statute and its legislative history . . . [provide] no support for the proposition espoused . . . that predicate acts of racketeering may form a pattern only when they are part of separate illegal schemes." *H.J., Inc.*, 492 U.S. at 236. On this point, the Court was unanimous. *See, id.*, at 256 (Scalia, J., with Rehnquist, C.J., O'Connor, J., and Kennedy, J., concurring in the judgment):

> [T]he Court is correct in saying that nothing in the statute supports the proposition that predicate acts constituting part of a single scheme (or single episode) can never support a cause of action under RICO.

Second, like the term "multiple scheme," "single, otherwise lawful transaction" is "'hardly a self-defining term.'" *Id.*, at 241 n. 3, *citing Barticheck v. Fidelity Union Bank/First Nat. State*, 832 F.2nd 36, 39 (3rd 1987). Whether a "single, otherwise lawful transaction" exists "is in the eye of the beholder" and "depends on the level of generality at which criminal activity is viewed." *Id.* For example, the numerous predicate acts alleged in this case might be viewed—as they are by Respondents and the court of appeals—as a single "routine newsgathering" endeavor. Or, they can be viewed as they should be and as the Church expressly alleged, as multiple schemes to defraud (App. pp. 70a-72a),[40] ongoing over a period of years (App. p. 31a, ¶B(1)), with multiple victims, *e.g.*, the bank, the data processing company, the Church, the Church's law firm, *etc. See also, e.g., Combs v. Bakker*, 886 F.2nd 673, 677-78 (4th Cir. 1989), *rev'g*, 692 F.Supp. 596, 601 (W.D. N.C. 1988) where the district court had improperly dismissed plaintiffs' RICO claims for failure to allege a "pattern" because the district court viewed Jim Bakker's PTL "lifetime partnership" fraud, with 55,000 alleged victims, as "a single basic injury." In short, the "single, otherwise lawful transaction" approach once again introduces into RICO law a "'new and perhaps more

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[40]Ironically, the Church's complaint would have survived even the restrictive "multiple schemes" standard rejected in *H.J., Inc.*

amorphous concept into the analysis' that has no basis in text or legislative history." *H.J., Inc.*, 492 U.S. 241, n. 3.

Equally amorphous and inconsistent with prior decisions of this Court is the court of appeals' conception of an "*otherwise lawful*" single transaction. RICO plainly applies to both legitimate and illegitimate "enterprises." *United States v. Turkette*, *supra*. If that is so—as it must be—and if a "legitimate" enterprise conducts its affairs, as here, through a "series of related predicates extending over a substantial period of time" or that "by [their] nature [project] into the future with a threat of repetition," by what stroke of statutory interpretation do those predicate acts fail to establish a RICO "pattern" simply because the *object* of the RICO activity *could have been* otherwise accomplished by *legal* means?[41] In simple terms, under the Fifth Circuit's "single, otherwise lawful" standard, the ends justify the means. Yet, depending "on the level of generality at which criminal activity is

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[41]Here the Church alleged both a closed-ended and open-ended pattern. The Church properly pleaded a closed period of conduct from at least May, 1991, until June, 1993-a period of slightly over two years. *See, e.g., United States v. Nabors*, 45 F.3rd 238, 241 (8th Cir. 1995) (7-month period sufficient); *Cox v. Admin. United States Steel & Carnegie*, 17 F.3rd 1386, 1398 (11th Cir. 1994) (16 months) *cert. denied*, 130 L.Ed.2nd 784 (1995); *United States v. Pelullo*, 964 F.2nd 193, 210 (3rd Cir. 1992) (19 months); *United States v. Stodola*, 953 F.2nd 266, 270 (7th Cir.) (20 months), *cert. denied*, 121 L.Ed.2nd 63 (1992); *Swistock v. Jones*, 884 F.2nd 755, 759 (3rd Cir. 1989) (14 months may be sufficient). The Church also pleaded an open period demonstrating a threat of future criminal activity. *See, e.g., Shields Enterprises, Inc. v. First Chicago Corp.*, 975 F.2nd 1290 (7th Cir. 1992); *Ticor Title Ins. Co. v. Florida*, 937 F.2nd 447 (9th Cir. 1991); *United States v. Busacca*, 936 F.2nd 232 (6th Cir.), *cert. denied*, 502 U.S. 985 (1991). The threat of future criminal activity was demonstrated not only by the ABC Respondents' admission that their conduct was their "routine" method of "newsgathering," *see H.J., Inc.*, 492 U.S. at 243 ("continuity" is satisfied by showing that predicates are regular way of conducting defendant's ongoing legitimate business), but also evidenced by Anthony's persistent, long-standing "crusade" against the Church, and the willingness of Respondents to engage in obstruction of justice (filing false affidavits; *see* App. pp. 74a, 79a-82a, 127a-128a, 164a-166a, and 195a-196a) in order to conceal their racketeering activity long after the final *PrimeTime Live* broadcast. *See Tabas v. Tabas*, 47 F.3rd 1280, 1296 (3rd Cir.) (*en banc*, plurality opinion; continuing threat shown by defendants' continuing their regular business practices even after suit was filed), *cert. denied*, 132 L.Ed.2nd 275 (1995).

viewed," virtually *any* "legitimate enterprise" could characterize the goal of its racketeering activity as "otherwise lawful." Were not the predicate acts in *H.J., Inc., supra* committed to achieve the "otherwise lawful" purpose of obtaining a favorable public utility rate from the public utility commission? Likewise, could not the fraudulent, inflated invoices submitted in *Sedima, supra* be characterized as "part and parcel" of the "single, otherwise lawful" joint venture into which the parties had entered?

B. The Church's Complaint Would Have Been Upheld in Other Circuits Properly Applying *H.J., Inc.*

The court of appeals openly conceded Fifth Circuit "pattern" cases "are consistently different" from cases in other circuits and the Church's lawsuit would likely have been allowed to proceed under the law of other circuits. 90 F.3rd at 123, *citing, Shields Enterprises, Inc. v. First Chicago Corp., supra*; *Ticor Title Ins. Co. v. Florida, supra*; *United States v. Busacca, supra*; *Ikuno v. Yip*, 912 F.2nd 306 (9th Cir. 1990). The concessions are warranted. The inequality of result is not.

The Court's primary goal in *H.J., Inc.*, was to define a uniform national "pattern" approach and minimize, if not eliminate, precisely this sort of inconsistency. The court of appeals' substitution of its own standard for that of this Court defeats that laudatory objective. "[C]larity and predictability in RICO's civil applications are particularly important"[42] and the sufficiency of a plaintiff's RICO allegations should not depend on the circuit in which the lawsuit is filed. Nor is the desirability for a shorthand, supposedly easy-to-apply, test justification for refusing to apply the careful case-by-case factual evaluation required by *H.J., Inc.*[43]

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[42]*H.J., Inc.*, 492 U.S. at 255 (Scalia, J., with Rehnquist, C.J., O'Connor, J., and Kennedy, J., concurring in the judgment).

[43]It is particularly inappropriate to make sweeping "pattern" determinations, as was done here, on a motion to dismiss because such determinations depend on the specific facts *proved* in each case. *E.g., H.J., Inc.*, 492 U.S. at 242; ***footnote continued on next page . . . .***

CONCLUSIONS

Both of the questions presented in this case are important ones that need resolution. Both questions arise in a procedural context in which there are no factual issues to be resolved, only sharply defined legal ones. Both questions were answered by the court of appeals in a manner that conflicts with the law in the other circuits.

The scope of §1985(3)-at least concerning its protection of religious groups—is an important national question that should not be left open to doubt. The court of appeals' wholly unexplained refusal to apply §1985(3) to religiously-based conspiracies creates a conflict in the circuits that should not be allowed to stand.

Concerning the RICO question, the Court granted *certiorari* in *H.J., Inc.*, precisely to *resolve* conflicting interpretations by the courts of appeals of RICO's "pattern of racketeering activity" requirement and establish a single "meaningful concept of 'pattern' within the existing statutory framework . . . ." 492 U.S. at 236. The test there established by the Court is neither "arcane" nor cryptic. The decision of the court of appeals to adopt its own inconsistent standard represents a step backwards in RICO law, once again creating conflicting interpretations of the statute, and uncertainty and unequal treatment for RICO plaintiffs and defendants alike.

For all of these reasons, the writ should be granted.

---

footnote continued from previous page . . . .

Diamonds Plus, Inc. v. Kolber, 960 F.2nd 765, 769 (8th Cir. 1992) ("Ultimately, the existence of a pattern is a question of fact."). At the pleadings stage—even in a RICO case—general allegations are sufficient. *National Organization for Women, Inc. v. Scheidler*, 127 L.Ed.2nd at 107 (general allegations of "injury" from RICO violation sufficient, *quoting Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)). *See also Howell Petroleum Co. v. Weaver*, 776 F.2nd 1302, 1303 (5th Cir. 1985) (general allegations sufficient to satisfy RICO), *reh'g denied*, 780 F.2nd 1198, 1199 (5th Cir. 1986) (all elements of RICO must be pleaded, but plaintiff need only do so in accordance with liberal notice-pleading procedure of *Fed. R. Civ. P.*).

Respectfully Submitted,

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November 4, 1996

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. 96

IN THE

Supreme Court of the United States

October Term, 1996

WORD OF FAITH WORLD OUTREACH CENTER CHURCH, *ET AL.*,

PETITIONERS,

VS.

DIANE SAWYER, CAPITAL CITIES/ABC INC., *ET AL.*,

RESPONDENTS,

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX TO PETITION FOR CERTIORARI

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TABLE OF CONTENTS

Page

Word of Faith Outreach Cent. Church v. Sawyer,
90 F.3d 118 (5th Cir. 1996) ..... 1 - a

Final Judgment,
February 8, 1995, U.S. District Court, Northern
District of Texas, Dallas Division..... 16 - a

Order Granting ABC Defendants' Motion to Dismiss and Granting Trinity Defendants' Motion to Dismiss and Declaring Moot Trinity Defendants' Alternative Motion for Summary Judgment,

February 8, 1995, U.S District Court, Northern
District of Texas, Dallas Division..... 17 - a

CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS,
42 U.S.C. §1985(2) and (3)..... 23 - a

RICO, DEFINITIONS,
18 U.S.C. §1961(1) and (3)-(5)..... 24 - a

RICO, PROHIBITED ACTIVITIES,
18 U.S.C. 1962(c) and (d)..... 25 - a

RICO, CIVIL REMEDIES,
18 U.S.C. §1964(c) ..... 26 - a

Order Granting Joint Motion for Leave to File Third Amended Complaint, etc.,

August 2, 1994, U.S. District Court, Northern
District of Texas, Dallas Division..... 27 - a

Page

Plaintiffs' Third Amended Complaint,
August 2, 1994, U.S. District Court, Northern
District of Texas, Dallas Division.....29 - a

Second Amended RICO Case Statement,
May 9, 1994, U.S. District Court, Northern
District of Texas, Dallas Division.....131 - a

Interlocutory Judgment,
March 18, 1994, U.S. District Court, Northern
Division of Texas, Dallas Division.....219 - a

Original Complaint,
November 11, 1993 U.S. District Court, Northern
Division Texas, Dallas Division .....220 - a

Handwritten Notes:
"No fraud to be had on this guy-can have fun w/
him though-" .....259 - a

Invoice and Payment for recovery of data on stolen
computer disk.....260 - a

WORD OF FAITH WORLD OUTREACH CENTER CHURCH, INC., A DISSOLVED CORPORATION ON BEHALF OF ITS MEMBERS; WORD OF FAITH WORLD OUTREACH CENTER CHURCH, A CHURCH ON BEHALF OF ITS MEMBERS,

PLAINTIFFS-APPELLANTS,

V.

DIANE SAWYER, AN INDIVIDUAL; CAPITAL CITIES/ABC INC., A NEW YORK CORPORATION, AMERICAN BROADCASTING COMPANIES, INC., A DELAWARE CORPORATION; ABC NEWS, INC., A DELAWARE CORPORATION; ROBBIE GORDON, AN INDIVIDUAL; KELLY SUTHERLAND, AN INDIVIDUAL; JEFF COOKE; TRINITY FOUNDATION, INC., A TEXAS NON-PROFIT CORPORATION; OLE ANTHONY, AN INDIVIDUAL; HARRY GUETZLAFF, AN INDIVIDUAL; POWELL HOLLOWAY, AN INDIVIDUAL; JOE DOES, AND/OR JANE 1-30,

DEFENDANTS-APPELLEES,

A H BELO CORP., A TEXAS CORPORATION; WFAA-TV, INC., A TEXAS CORPORATION; BILL BROWN; DALLAS MORNING NEWS, INC., A TEXAS CORPORATION; ED HOUSEWRIGHT, AN INDIVIDUAL; STEVE BLOW, AN INDIVIDUAL; ED BARK, AN INDIVIDUAL,

DEFENDANTS.

UNITED STATES COURT OF APPEALS,

Fifth Circuit
Filed AUG. 7, 1996.
No. 95-10218.

Church and televangelist brought suit alleging that television network violated Racketeer Influenced and Corrupt Organizations Act (RICO) by broadcasting investigative news report which were critical of fundraising techniques used by plaintiffs. The United States District Court for Northern District of Texas, Robert B. Maloney, J., dismissed suit for fail-

ure to state claim and appeal was taken. The Court of Appeals, Edith H. Jones, Circuit Judge, held that: (1) producing television news report was not "pattern of racketeering activity" required to state RICO claim; (2) existence of several lawsuits against television network did not allege continued threat of illegal activity; (3) § 1985(3), prohibiting conspiracy' motivated by racial animus, did not apply to conspiracy allegedly motivated by religious animus; and (4) denying further opportunities to replead was not an abuse of discretion.
Affirmed.

1. Federal Courts 776
Court of Appeals reviews de novo district court's dismissal for failure to state claims.

2. Federal Courts 763.1
Dismissal for failure to state claim may be upheld on appeal only if it appears that no relief can be granted under any set of facts that could be proven consistent with allegations.

3. Federal Court 794
All well-pled facts are accepted as true when reviewing dismissal for failure to state claim and facts are viewed in light most favorable to nonmoving party.

4. Racketeer Influenced and Corrupt Organizations 10,26
"Racketeering activity" required for civil claim under Racketeer Influenced and Corrupt Organizations Act (RICO) consists of two or more predicate offenses, defined by statute to include acts violating federal wire or mail fraud statutes. 18 U.S.C.A. §1961.

6. Racketeer Influenced and Corrupt Organizations 28
"Pattern of racketeering activity, required for civil Racketeer Influenced and Corrupt Organizations Act (RICO) claims requires showing that racketeering predicates are related and threaten continued criminal activity. 18 U.S.C.A. § 1961.

See publication Words and Phrases for other judicial constructions and definitions.

7. Racketeer Influenced and Corrupt Organizations 28
Relatedness of racketeering acts, required to establish civil claim under Racketeer Influenced and Corrupt Organization Act (RICO) is established if acts have same or similar purposes, results, participants, victims, or methods of commission. 18 U.S.C.A. § 1961.

8. Racketeer Influenced and Corrupt Organization 28
"Continuity" of racketeering activity or threat of racketeering activity, required for civil claim under Racketeer Influenced and Corrupt Organizations Act (RICO), is satisfied by showing of either closed period of repeated conduct or open-ended period of conduct that by its nature projects into future with threat of repetitions; closed period of conduct may be demonstrated by proving series of related predicates extending over substantial period of time, while open period of conduit involves threat of continued racketeering activity. 18 U.S.C.A. § 1961.

See publication Words and Phrases for other judicial construction and definitions.

9. Racketeer Influenced and Corrupt Organizations 31
Production of television investigative news report concerning televangelist's fundraising techniques was not "continuity of racketeering activity" required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO); alleged predicate acts occurred during production and airing of news reports were part of single, lawful endeavor. 18 U.S.C.A. § 1961.

See publication Words and Phrases for other judicial constructions and definitions.

10. Racketeer Influenced and Corrupt Organizations 1 27
"Pattern of racketeering activity," required to state claim under Racketeer Influenced and Corrupt Organization Act (RICO), is

not pled when alleged RICO predicate acts are part and parcel of a single, otherwise lawful transaction. 18 U.S.C.A. § 1961.

See publication Words and Phrases for other judicial constructions and definitions.

11. Racketeer Influenced and Corrupt Organizations 31

Lawsuits by persons dissatisfied with their portrayal in investigative news programs did not demonstrate continued threat of illegal activity required for televangelist and church to state Racketeer Influenced and Corrupt Organizations Act (RICO) claims against television network which broadcasted investigative report that was critical of church's fund-raising techniques; existence of lawsuits did not demonstrate illegal acts as defendant's regular way of doing business. 18 U.S.C.A. § 1961.

12. Conspiracy 7.5(1)

Statute prohibiting conspiracy motivated by racial animus to deprive persons of equal protection or equal privileges and immunities did not apply to conspiracies motivated by religious animus. 42 U.S.C.A. § 1985(3).

13. Federal Civil Procedure 1838

Denying plaintiff opportunity to replead after dismissing for failure to state claim was not an abuse of discretion given that previously amended pleadings which were accepted and two amended case statements gave plaintiff ample opportunity to plead claim.

14. Federal Courts 1 817

Although leave to amend should be freely granted, Court of Appeals reviews district court's refusal to allow amendment only for abuse of discretion.

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Capital Cities/ABC Inc., American Broadcasting Companies, Inc., ABC News, Inc. Gordon, Sutherland and Cooke.

Richard Alexander Rohan, Barbara M.G. Lynn, Dallas, TX, for defendants-appellees Trinity Foundations, Inc., Anthony, Guetzlaff and Holloway.

Appeal from the United States District Court for the Northern District of Texas.

Before REYNALDO G. GARZO, JONES and DENNIS, Circuit Judges.

EDITH H. JONES, Circuit Judge:

> This lawsuit began as a result of critical television reports on the weekly ABC news program Prime Time Live concerning Reverend Robert Tilton and Word of Faith World Outreach Center Church. The Church and Word of Faith World Outreach Center Church, Inc. appeal the decision of the district court dismissing their claims against ABC and others who assisted ABC in preparing the shows for violation of the RICO statute and a federal civil rights statute. 42 U.S.C. § 1985(3).

We affirm.

I. BACKGROUND

The facts are distilled from appellants' pleadings. Word of Faith World Outreach Center Church is a Christian church based in Farmers Branch, Texas, a suburb of Dallas.[1] Robert Tilton is the Church's headpastor, and central to the Church's beliefs is the importance of tithing and making vows to God. The Church teaches that expressions of faith as manifested by financial vows to God, through the Church, are rewarded by God with physical, spiritual, and financial prosperity. At the peak of the Church's popularity, approximately 8,000 people

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[1] The Appellants are Word of Faith World Outreach Center Church, Inc. ("WOF, Inc.") and Word of Faith World Outreach Center Church. In March 1992, WOF, Inc. transferred all its assets to the Church and thereafter dissolved. Appellants will be collectively referred to as the "Church" or "Appellant."

regularly attended services, with an additional national television audience estimated in the hundreds of thousands.

In addition to weekly services and television broadcasts, the Church on a regular basis mails items of correspondence to members who have asked that their names be placed on the Church's mailing list. Often, these mailings include materials that the member can return to the Church in an enclosed preaddressed envelope, such as a prayer cloth or prayer request, and which Reverend Tilton has promised to pray over. The Church classifies mail returned as a result of these mailings as "regular mail." The Church also routinely received unsolicited pieces of mail, known by the Church as "white mail."

In the spring of 1991, journalists working for ABC's weekly news program *PrimeTime* Live (*"PrimeTime's*) began an investigation of Tilton. PrimeTime's investigation was aided by Ole Anthony and other affiliated with Trinity Foundation, Inc., a non-profit corporation founded by Anthony for the purpose of supporting Christ centered communication projects. Anthony is passionately opposed to some televangelists, including Tilton.

On November 21, 1991, *PrimeTime* broadcast a report concerning three televangelists, including Tilton, that was highly critical of Tilton, and his fund-raising practices. A week later, *PrimeTime* broadcast a brief update reporting reactions to the November 21 broadcast. On July 9, 1992, the original November 21 program was rebroadcast, with certain minor changes, together with a follow-up report. PrimeTime's ratings, which had been low, significantly improved following the Tilton broadcast.

The theme of the broadcasts was that Tilton personally acquired millions of dollars of donations sent to the Church, and that he never prayers over thousands of prayer request. *PrimeTimes's* claim that Tilton failed to pray over the prayer requests derived from prayer request purportedly found during "trash sweeps" conducted by persons affiliated with the Trinity Foundation at the direction of ABC representatives.

The Church disputes *PrimeTimes's* claim that prayer requests where thrown away before the promised prayer by Tilton. As

evidence, the Church points to its sophisticated document and financial accounting system which accounts for every piece of mail received and its contents. This system involves a bank and a mail-handling contractor, and the Church asserts that it can establish that none of the prayer requests reportedly found in the trash could have been found at the times and place claimed by those who carried out the "trash sweeps." Instead, the Church claims, the items depicted in the trash consist of: (1) Church mailing received directly by ABC operatives who had placed their names on the Church's mailing lists, and which were never mailed back to the Church; (2) items obtained from the Church by the defendants while attending worship services, and which also were never mailed back to the Church; (3) "regular mail" and other items stolen by the defendants from the bank and mail-handling contractor; and (4) "white mail" stolen from either the bank or the Church.

Following the broadcast, Church membership and financial giving dropped sharply. This, in turn, required the Church to close its television ministry and reduced its outreach ministry. Additionally, since the *PrimeTime* broadcast, the Church has been investigated by numerous local, state, and federal authorities.

In November 1993, the Church brought suit on behalf of its members against Capital Cities/ABC, Inc., Diane Sawyer, co-anchor of *PrimeTime*, the Trinity Foundation, Ole Anthony, and several other business entities and persons associated with the broadcasts. The Church alleged that through a pattern of racketeering acts ABC and other defendants sought to drive the Church out of business. The alleged racketeering acts included interstate transportation of stolen computer disks, theft of donations, Church mail, and other Church property by certain defendants or by bank, mail-handling, or Church employees who has been persuaded to help the defendants' wire fraud in the form of false statements made during broadcasts; a scheme to deprive the Church, its bank, its mail-handling contractor, and its law firm of the honest services of its loyal employees; and obstruction of justice. Additionally, the

Church sought recovery pursuant to 42 U.S.C. § 1985(3), claiming defendants conspired to deprive the Church and its members of their right to exercise their religious beliefs.

All defendants moved to dismiss for failure to state a claim upon which relief can be granted. The district court granted to motions, finding that the Church failed to plead a pattern of racketeering activity, and that conspiracies motivated by religious animus are not actionable under § 1985(3). The Church appeals.

II. DISCUSSION

A. Standard of Review

[1-3] We review *de novo* the district court's dismissal for failure to state a claim. *Capital Parks, Inc. v. Southeastern Advertising and Sales Sys., Inc.* 30 F.3d 627, 629 (5th Cir.1994). The district court's decision may be upheld "only if it appears that no relief could be granted under any set of facts that could be proven consistent with the allegations." *Rubinstein v. Collins*, 20 F.3d 160, 166 (5th Cir.1994) (internal quotation and citation omitted). We accept as true all well-pleaded facts, and view them in the light most favorable to the non-moving party. Capital Parks, 30 F.3d at 629.

B. Racketeering Claims

[4] The Church alleges the defendants violated 18 U.S.C. § 1962(c) and (d) of the Racketeer Influence and Corrupt Organization Act (RICO), 18 U.S.C. §§ 1961-1968. Subsection 1962(c) prohibits persons employed by or associated with any enterprise from conducting or participating in the enterprise's affairs through a pattern of racketeering.[2] Subsection 1962(d) prohibits a conspiracy to violate 18 U.S.C. § 1962(a), (b), (c). Under both subsections, RICO claims require "1) a person who engages in 2) a pattern of racketeering activity, 3) connected to the acquisition, establishment, conduct, or control of an enterprise." *In re Burzynski*, 989 F.2d 733, 741-42 (5th Cir. 1993) (*quoting Delta Truck & Tractor, Inc. v. J.I. Case Co.*, 855 U.S. 1079, 109 S.Ct. 1531, 103 L.Ed.2d 836 (1989).

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[2] 18 U.S.C. § 1962(c) provides:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

[5-8] The central issue on appeal is whether the Church sufficiently pled a "pattern of racketeering activity."[3] "Racketeering activity" consists of two or more predicate offenses, defined by the statute to include acts violating federal wire or mail fraud statues. 18 U.S.C. § 1961. To establish a pattern of racketeering activity, the Supreme Court explained in *H.J. Inc. v. Northwestern Bell Telephone*, Co. 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989), that a plaintiff "must show that the racketeering predicates are related, and that they amount to or pose a threat of *continued criminal activity*." *Id.* at 239, 109 S.Ct. at 2900 (emphasis added). The element of relatedness is established if the acts have the "same or similar purposes, results, participants, victims, or methods of commission." *Id.* at 240, 109 S.Ct. at 2901 (internal quotation and citation omitted). To establish continuity, plaintiffs must prove "continuity of racketeering activity, or its threat." *Id.* at 241 109 S.Ct. at 2902. This may be shown by either a closed period of repeated conduct, or an open-ended period of conduct that "by its nature projects into the future with a threat of repetition." *Id.* at 241, 109 S.Ct. at 2902. A closed period of conduct may be demonstrated "by providing a series of related predicates extending over s substantial period of time." *Id.* at 242, 109 S.Ct. at 2902. An open period of conduct involves the establishment of "a threat of continued racketeering activity." *Id.* This may be shown where there exists a "specific threat of repetition extending indefinitely into the future," or "where it is shown that the predicates are a regular way of conducting defendant's ongoing legitimate business." *Id.* at 242-43, 109 S.Ct. at 2903. The Court stated that in enacting RICO, Congress was con-

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[3] Appellees would also sustain the district court's judgment on the grounds that the Church did not plead either "predicate acts" or injury, requirements of RICO that have particular legal characteristics. We do not reach these issues, although it should be evident that by predicating our holding on RICO's pattern requirements, we do not accept ABC's blanket contention that a RICO claim can never arise from a television broadcase.

cerned with "long-term criminal conduct." *Id.* at 242, 109 S.Ct. at 2902.

Defendants do not contest the "relatedness" element of the "pattern of racketeering" requirement. Issues is joined by the parties over the continuity of ABC's alleged conduct: the Church contends it pled both a closed period of conduct and an open period of conduct as described in *H.J. Inc.* We disagree, as three of this court's precedents foreclose the establishment or continuity.

In the first case, a doctor alleged that during the course of a lawsuit with an insurance company overpayment of claims, the insurance company and others committed many fraudulent acts, including sending letters to other insurers to dissuade them from paying on the doctor's claims; creating a company to generate negative reviews of the doctor's methods of treatments' and "goading" government agencies into investigating the doctor. In re *Burzynski,* 989 F.2d 733 (5th Cir. 1993). This court concluded that the doctor failed to plead the continuity element of a "pattern of racketeering":

> All of the alleged predicate acts took place as part of the *Burzynski* I litigation, which has ended. In [*Delta Truck & Tractor, Inc., v. J.I. Case., Co.,* 855 F.2d 241 (5th Cir.1988), *cert. denied,* 489 U.S. 1079, 109 S.Ct. 1531 [103 L.Ed.2d 836], (1989)], we affirmed the dismissal of a RICO claim where the plaintiff alleged multiple acts of fraud that were part and parcel of a single, desecrate and otherwise lawful commercial transaction. In *Delta,* the lawful transaction was a merger; here, it is the defense of a lawsuit-which is now over. The conduct did not constitute or threaten long-term criminal activity.

In re Burzynski, 989 F.2d at 743.

Similar, in *Calcasieu Marine Nat'l Bank v. Grant,* 943 F.2d 1453 (5th Cir.1991) the court found a lack of continuity. The plaintiff, Mrs. Grant, sued her former husband for depriving her of her community property interest in a partnership in which he had been an active member. To establish continuity,

Mrs. Grant claimed a closed period of conduct. The court held, however, that

> there is no threat here of continued criminal acts. [Mr.] Grant's acts which were alleged to have deprived Mrs. Grant of a property interest of repetition. Short-term criminal conduct is not concern of RICO.

Calcasieu, 943 F.2d at 1464.

The earliest case that discussed the element of continuity under RICO, albeit before the Supreme Court's decision in *H.J. Inc.,* is *Delta Truck & Tractor, Inc. v. J.I. Case Co., 855 F.2d 241 (5th Cir.1988), cert. denied,* 489 U.S. 1079, 109 S.Ct. 1531, 103 L.Ed.2d 836 (1989). Delta Truck, an International Harvester dealer, alleged that International harvester, J.I. Case Co., and Tenneco, Inc. had committed numerous predicate acts of wire and mail fraud in connection with the acquisition of International Harvester by Case and Tenneco. The district court dismissed the complaint. This court affirmed, focusing on the concept of continuity as incorporated in the enterprise element of RICO. The court stated:

> Delta has attempted to state a RICO claim by alleging multiple acts of fraud that were part and parcel of a single, discrete and otherwise lawful commercial transaction. This claim fails to state a RICO cause of action as a matter of law because the pleadings do not assert that the cooperate defendants posed a continuous threat as a RICO person. Delta has alleged as a pattern of racketeering activity nothing more than numerous predicate acts which were necessary segments of an otherwise legitimate and singular commercial endeavor.

Id. at 244.

[9,10] It is unnecessary to delve into the arcane concepts of closed-end or open-ended continuity under RICO. *Burzynski, Calcasieu,* and Delta Truck make clear that where alleged RICO predicate acts are part and parcel of a single, otherwise lawful transaction, a "pattern of racketeering activity" has not been shown. In this case, the alleged predicate acts occurred

during the production and airing of *PrimeTime* broadcasts concerning Tilton and his Church. The alleged acts were all part of a single, lawful endeavor-namely the production of television news reports concerning a particular subject. We agree with the district court that the Church has failed to plead a "continuity of racketeering activity, or its threat." *H.J. Inc.*, 492 U.S. at 241, 109 S.Ct. at 2902.[4]

[11] The Church alternatively contends that it is ABC's regular pattern of conducting business to use illegal means to further its TV production, citing to newspaper reports and to several lawsuits brought by parties dissatisfied with their portrayal in ABC news programs. However, in the case whose facts are most similar to those present here, the district court found that the plaintiff failed to established continuity and dismissed the RICO claims. *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 887 F.Supp. 811, 819-20 (M.D.N.C.1995). Pleading the mere existence of lawsuits is not the same as pleading the facts that demonstrate predicate illegal acts as the defendant's regular way of doing business. The Church has not in this respect sufficiently alleged a continued threat of illegal activity by ABC.

C. Section 1985(3) Claim

[12] The Church contends it properly pled a claim under 42 U.S.C. § 1985(3) based on the animus of defendants toward the

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[4] The law in other circuits might have allowed this case to proceed further. *See Shields Enterprises, Inc. v. First Chicago Corp.*, 975 F.2d 1290 (7th Cir. 1992) (where defendant used extortion every time it wished to accomplish a goal in dealing with plaintiff, a pattern could be shown); *Ticor Title Ins. Co. v. Florida*, 937 F.2d 447 (9th Cir. 1991) (three forgeries within thirteen month period suggests a regular way of conducting business); *United States v. Busacca*, 936 F.2d 232 (6th Cir.) *cert. denied*, 502 U.S. 985, 112 St. Ct. 595, 116 L.Ed.2d 619 (1991) (where defendant misappropriated money whenever an expense was incurred, a pattern was established); *Ikuno v. Yip*, 912 F.2d 306 (9th Cir. 1990) (pattern requirements met with the filing of two allegedly false annual reports). The precedents of this circuit concerning continuity are consistently different from these cases.

Church's religious doctrines and its First Amendment rights. To state a claim under section 1985(3), a complaint must allege:

> (1) a conspiracy of two or more person; (2) for the purpose of depriving, either directly or directly, any person or class of persons equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured of any right or privilege of a citizen of the United States.

Deubert v. Gulf Federal Savings Bank, 820 F.2d 754 757 (5th Cir.1987). Essential to the claim, however, is that the conspiracy by motivated by racial animus. *See Green v. State Bar of Texas,* 27 F.3d 1083, 1088 n. 8 (5th Cir.1994); Deubert, 820 F.2d at 757; *Rayborn v. Mississippi State Bd. Of Dental Examiners*, 776 F.2d 530, 532 (5th Cir.1985). We decline the Church's invitation to extend the reach of section 1985(3) to include conspiracies motivated by religious, as opposed, to racial animus. The district court properly dismissed this claim.

D. Opportunity to Cure Pleadings

[13,14] The Church contends that at a minimum it should be allowed to amend its pleadings to cure any deficiencies in its RICO claim, arguing that the district court gave no opportunity to replead after concluding that the Church failed to plead a RICO pattern. Although leave to amend should be freely granted, we review the district court's refusal to allow amendment only for abuse of discretion. *Robertson v. Plano City,* 70 F.3d 21, 22 (5th Cir.1995); *Wheat v. Mass,* 994 F.2d 273, 277 (5th Cir. 1993).

The Church's RICO claim was contained in its First Amended Complaint, its Second Amended Complaint, which the district court refused to accept, and its Third Amended Complaint, which the district court accepted. Further, the Church filed two Amended RICO Case Statements. The Church was given ample opportunity to plead its RICO claim. The district court did not abuse its discretion in denying the Church an opportunity to replead.

III. CONCLUSION

Having decided that the Church failed to state a claim under RICO or § 1985(3), we do not reach appellees' *res judicata* arguments. The judgment of the district court is AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

No. 3:93-CV-2310-T
Filed FEB 8, 1995
Nancy Doherty, Clerk

WORD OF FAITH WORLD OUTREACH CENTER CHURCH, *ET AL.*,

PLAINTIFFS,

V.

DIANE SAWYER, *ET AL.*,

DEFENDANTS.

FINAL JUDGMENT

This action came before the Court, Honorable Robert B. Maloney, presiding, and the issues having been duly considered and a decision having been duly considered and a decision having been rendered.

It is **ORDERED** and **ADJUDGED** that Plaintiffs' complaint is dismissed with prejudice.

It is **FURTHER ORDERED** and **ADJUDGED** that all relief not specifically granted herein is denied.

Signed this 6th day of February 1995.

/s/ Robert B. Maloney
Robert B. Maloney
U. S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

No. 3:93-CV-2310-T
Filed FEB 8, 1995
Nancy Doherty, Clerk

WORD OF FAITH WORLD OUTREACH CENTER CHURCH, *ET AL.*,

PLAINTIFFS,

V.

DIANE SAWYER, *ET AL.*,

DEFENDANTS.

ORDER GRANTING ABC DEFENDANTS' MOTION TO DISMISS AND GRANTING TRINITY DEFENDANTS' MOTION TO DISMISS
AND
DECLARING MOOT TRINITY DE-FEDANTS'ALTERNATIVE MOTION FOR SUMMARY JUDGMENT

Before the Court are the Motion to Dismiss filed by Defendants Capital Cities/ABC, Inc., American Broadcasting Companies, Inc., ABC News, Inc., Diane Sawyer, Robbie Gordon, Kelly Sutherland, and Jeff Cooke (the "ABC Defendants") and the Motion to Dismiss or Alternative Motion for Summary Judgment filed by Defendants Trinity Foundation, Inc., Ole Anthony, Harry Guetzlaff, and Powell Holloway (the "Trinity Defendants.") The motions are opposed. After consideration of the motions, responses, and replies, the Court is of the opinion that the Motions to Dismiss should be granted and the Alternative Motion for Summary Judgment be declared moot.

On November 21, 1991, ABC broadcast a report on its weekly television news program, *PrimeTime Live*, that was highly critical of Robert Tilton, the Principal Pastor of Word of Faith World Outreach Center Church. A week later *PrimeTime* broadcast a brief update reporting reactions to the broadcast. The original broadcast was repeated, with certain minor changes, on July 9, 1992, together with a follow-up report. In November of 1992, Tilton commenced a libel action against the ABC Defendants, except Cooke, in the United States District Court for the Northern District of Oklahoma claiming the broadcasts were false and defamatory. The church did not join in the action.

In November of 1993, Plaintiffs filed this action. Plaintiffs' claims under 42 U.S.C. §§ 1985(2) and (3) were dismissed and Plaintiffs amended their complaint to add a RICO claim. The RICO claim is the only claim remaining in this case. Plaintiffs contend that:

> As a result of the three *PrimeTime Live* broadcasts the Church, its pastor, and the Church's ministries have been subject to public scorn and derision, subjected to numerous investigations by local, state, and federal authorities, the Church's television ministry has been forced to close--resulting in the loss of employment and personal financial hardship for approximately 800 Church employees and their families, and the Church's membership and outreach ministries have been significantly reduced.

The ABC Defendants move to dismiss Plaintiffs' Third Amended Complaint which asserts claims under 18 U.S.C. §§ 1962(c) and (d). They argue that the complaint should be dismissed because it fails to state a claim. Specifically, they argue the complaint does not: (1) allege injury to Plaintiffs' business or property proximately caused by RICO violations; (2) allege a RICO pattern; (3) allege that the ABC Defendants are RICO persons; (4) satisfy Fifth Circuit standards for

pleading a RICO claim; (5) allege a scheme to defraud; and (6) state a RICO violation. The ABC Defendants also argue that the complaint should be dismissed because it is an attempt to evade constitutional and statutory restrictions on libel actions.

The Trinity Defendants adopt the ABC Defendants' Motion to Dismiss. They also assert an additional basis for dismissal. They argue that Plaintiffs' claims are barred by *res judicata.*

A motion under Rule 12(b)(6) tests the legal sufficiency of claims stated in the complaint and must be evaluated solely on the basis of the pleadings. *Jackson v. Procunier*, 789 F.2d 307 (5th Cir. 1986). The court must decide whether the material facts alleged would entitle a plaintiff to offer evidence regarding the legal remedy it requests. *Scheuer v. Rhodes*, 416 U.S. 232 (1974). Unless the answer is unequivocally no, the motion must be denied. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

The United States Court of Appeals for the Fifth Circuit has established two primary considerations for a court's analysis of the propriety of dismissal under Rule 12(b)(6). First, the court must accept as true all well pleaded facts in the complaint, and the complaint is to be liberally construed in favor of the plaintiff. *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982), *cert. denied*, 459 U.S. 1105 (1983). However, the court will not accept conclusory allegations in the complaint as true. *Id.* Second, a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts that would entitle it to relief. *Id.*

Defendants argue that Plaintiffs do not allege a RICO pattern. They explain that the alleged predicate acts were directed toward the production and airing of the *PrimeTime* broadcasts that were aired between November 21, 1991, and July 9, 1992. the broadcasts resulted in one type of injury--damage to Tilton's reputation and the concomitant loss of in-

come to the church. Defendants argue that the focused acts of newsgathering and broadcasting directed at a single public figure over a short span of time and the focused injury they allegedly caused do not amount to the kind of continuous criminal activity required for a RICO pattern.

Plaintiffs respond that they have alleged a closed pattern of acts extending over a substantial period of time. Specifically, they allege a series of predicate acts extending from May, 1991, through June, 1993. They argue that related conduct extending over such a lengthy period of time establishes continuity. They further respond that the number, scope, and nature of the predicate acts alleged demonstrate a threat of future criminal activity. Alternatively, Plaintiffs argue that whether predicate acts constitute a pattern of racketeering activity is a fact question.

Plaintiffs allege RICO violations under 18 U.S.C. § 1962 (c) and (d). RICO claims pursuant to § 1962 necessitate: "1) a *person* who engages in 2) a *pattern of racketeering activity*, 3) connected to the acquisition, establishment, conduct, or control of an *enterprise*." *In re Burzynski*, 989 F.2d 733, 741 (5th Cir. 1993) (quoting *Delta Truck & Tractor, Inc. v. J.I. Case Co.*, 855 F.2d 241, 242 (5th Cir. 1988), *cert. denied*, 489 U.S. 1079 (1989))(emphasis in original). A pattern of racketeering activity has two components: 1) predicate acts--the requisite racketeering activity, and 2) a pattern of such acts. *Id.* at 742.

Assuming Plaintiffs pleaded acts which could serve as predicate acts, Plaintiffs are still required to plead a pattern of such acts. This requires plaintiffs to plead both that the predicate acts are related to each other and that they either constitute or threaten a long-term criminal activity. *Id.* (citing *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989); *Landry v. Air Line Pilots Ass'n Int'l*, 901 F.2d 404, 432 (5th Cir.), *cert. denied*, 498 U.S. 895 (1990)).

Defendants challenge the continuity prong of the pattern of activity requirements. Plaintiffs must be able to plead that the predicate acts amount to or threaten continuing racketeering

activity. *Id.* Continuity "refer[s] either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of *repetition*." *Id.* (quoting *H.J. Inc.*, 492 U.S. at 241).

In *Delta*, 855 F.2d 244, the Fifth Circuit affirmed the dismissal of a RICO claim where the plaintiff alleged multiple acts of fraud that were part and parcel of a single discrete and otherwise lawful commercial transaction. In *Delta*, the lawful transaction was a merger; here it is the broadcasts of *Prime-Time Live*. The broadcasts aired between November 21, 1991, and July 9, 1992, with the first alleged racketeering act taking place during the preparation for the first broadcast. The Court is of the opinion that the conduct in this case does not constitute or threaten long-term criminal activity. Accordingly, Plaintiffs claim for a RICO violation pursuant to 18 U.S.C. § 1962(c) should be dismissed with prejudice.

Defendants move that the RICO conspiracy claim be dismissed if the § 1962(c) RICO claim is dismissed, because the conspiracy claim cannot exist separate and apart from an underlying RICO violation.

Because the Court dismisses the § 1962(c) RICO claim, the § 1962(d) RICO claim should also be dismissed. Additionally, because the Court grants Defendants' Motion to Dismiss, the Trinity Defendants' Alternative Motion for Summary Judgment should be declared moot.

It is therefore **ORDERED** that the Motion to Dismiss filed by the ABC Defendants on September 1, 1994, is **granted**.

It is **FURTHER ORDERED** that the Motion to Dismiss filed by the Trinity Defendants on September 1, 1994 is **granted**.

It is **FURTHER ORDERED** that the Alternative Motion for Summary Judgment filed by the Trinity Defendants on September 1, 1994, is declared **moot**.

Signed this 6th day of February 1995.

/s/ Robert B. Maloney
Robert B. Maloney
U. S. District Judge

CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS, 42 U.S.C. §1985(2) AND (3)

(2) OBSTRUCTING JUSTICE; INTIMIDATING PARTY, WITNESS, OR JUROR.

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court. . .; or if two or more persons conspire for the purpose of impeding hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) DEPRIVING PERSONS OF RIGHTS OR PRIVILEGES.

If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire. . .; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

RICO, DEFINITIONS
18 U.S.C. §1961(1) AND (3)-(5)

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving. . .bribery. . .which is chargeable under State law and punishable by imprisonment for more than one year; (B) by any act which is indictable under any of the following provisions of title 18, United States Code: . . .section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud). . .section 1503 (relating to obstruction of justice). . .sections 2314 and 2315 (relating to interstate transportation of stolen property). . .

* * * * *

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years. . .after the commission of a prior act of racketeering activity;

RICO, PROHIBITED ACTIVITIES
18 U.S.C. §1962(C) AND (D)

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions or subsections (a), (b) or (c) of this section.

RICO, CIVIL REMEDIES
18 U.S.C. §1964(C)

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the costs of the suit, including a reasonable attorney's fee.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NO. 3-93CV2310-T
Filed AUG. 2, 1994
Nancy Doherty, Clerk

WORD OF FAITH WORLD OUTREACH CENTER CHURCH, A CHURCH ON BEHALF ITS MEMBERS, AND WORD OF FAITH WORLD OUTREACH CENTER CHURCH, INC., A DISSOLVED CORPORATION, ON BEHALF OF ITS MEMBERS,

PLAINTIFFS,

VS.

DIANE SAWYER, CAPITAL CITIES/ABC, INC., AMERICAN BROADCASTING COMPANIES, INC., *ET AL.*,

DEFENDANTS.

ORDER GRANTING JOINT MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT AND EXTENDING TIME FOR DEFENDANTS TO FILE RESPONSES
AND
DECLARING MOOT ALTERNATIVE MOTION AND SUPPLEMENTAL MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT

Before the Court are Plaintiffs' Alternative Motion for Leave to File Third Amended Complaint, Plaintiffs' Supplement to their Motion for Leave to File Third Amended Com-

plaint, and the parties' Joint Motion for Leave to File Third Amended Complaint and Extending Deadline for Defendants to File Responses. After consideration of the motions and responses, the Court is of the opinion that the alternative motion and the supplemental motion should be declared moot because the Joint Motion for Leave to File Third Amended Complaint supersedes them. Additionally, the Joint Motion for Leave to File Third Amended Complaint and Extending Deadline for Defendants to File Responses should be granted.

It is therefore **ORDERED** that the Joint Motion for Leave to Amend the Complaint and Extending Deadline for Defendants to File Responses, filed July 28, 1994, is **granted**.

It is **FURTHER ORDERED** that the District Clerk shall file the Third Amended Complaint which accompanies this order.

It is **FURTHER ORDERED** that Defendants may file responses to Plaintiffs's Third Amended complaint on or before September 1, 1994.

Signed this 2nd day of August 1994.

/s/ Robert B. Maloney
Robert B. Maloney
U. S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

No. 3-93CV2310-T

WORD OF FAITH WORLD OUTREACH CENTER CHURCH, A CHURCH ON BEHALF ITS MEMBERS, AND WORD OF FAITH WORLD OUTREACH CENTER CHURCH, INC., A DISSOLVED CORPORATION, ON BEHALF OF ITS MEMBERS,

PLAINTIFFS,

VS.

DIANE SAWYER, CAPITAL CITIES/ABC, INC., AMERICAN BROADCASTING COMPANIES, INC., *ET AL.*,

DEFENDANTS.

PLAINTIFFS' THIRD AMENDED COMPLAINT

Plaintiffs, Word of Faith World Outreach Center Church ("WOF Church"), an unincorporated association suing on behalf of its members, and Word of Faith World Outreach Center Church, Inc. ("WOF, Inc.,"), a dissolved non-profit corporation, on behalf of its members (collectively, "Plaintiffs" or "the Church"), pleading fraud with specificity, as required by Rule 9(b), *Fed. R. Civ. P.*, respectfully file their *Third Amended Complaint*:

I.
PROCEDURAL MATTERS

A. Nature of the Action:

1. This lawsuit is brought by plaintiffs on behalf of their members both for damages sustained by plaintiffs as a result of a pattern of racketeering activity engaged in by cer-

tain of the defendants, in violation of 18 U.S.C. §§ 1962(c) and (d). As is described with more particularity below, motivated both by religious bigotry and the desire for personal and corporate gain, having devised a scheme and artifice to fraudulently increase their ratings, circulation, incomes or advertising revenues, and also motivated by a desire to shut down the Church, the RICO Defendants conspired to engage, and did engage, in a pattern of racketeering activity which injured the Church in its property.

2. The RICO claims in this case arise from an unholy alliance between a small group of religious zealots opposed to the Church's teachings and beliefs (collectively, "the Trinity Defendants," described below)and a band of individual secular representatives (Roberta Gordon, Diane Sawyer, Kelly Sutherland, Jeff Cooke and an unknown number of as yet unidentified John or Jane Does, collectively referred to as the Individual ABC Defendants) of a powerful national news organization (Capital Cities/ABC Inc., American Broadcasting Companies, Inc., ABC News, Inc., collectively referred to as the Corporate ABC Defendants).[1]

3. The RICO Defendants were intent on destroying the reputation and livelihood of the Church's pastor, terminating the Church's national television ministry and shutting the doors of the Church—all because of the gang's own personal religious bigotry and desires to personally and professionally profit from their public persecution of the Church.

4. Together, beginning in the Spring of 1991, through the pattern of racketeering activity described below, the RICO Defendants devised a scheme whereby they would create, publish, circulate and nationally broadcast "news" stories about the Church and its pastor that they knew to be false and

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[1] Collectively, the Individual ABC Defendants and the Corporate ABC Defendants will be referred to simply as the ABC Defendants. Collectively, the ABC Defendants, the Trinity Defendants and the Doe Defendants will be referred to as the RICO Defendants.

fraudulent and based on "evidence" fraudulently and illegally manufactured by the RICO Defendants and, further, would work to conceal their racketeering activity even after the broadcasts.

5. Working in active concert and participation with one another, the RICO Defendants launched a summer-long "investigation" of the Church and its ministries beginning in May, 1991, that culminated in three separate national television broadcasts of ABC's *PrimeTime Live* with Diane Sawyer—November 21 and 28, 1991, and July 9, 1992—each of which was replete with statements concerning the Church, its pastor and its ministries that were known to the RICO Defendants to be false and fraudulent.

6. As a result of the three *PrimeTime Live* broadcasts the Church, its pastor, and the Church's ministries have been subjected to public scorn and derision, subjected to numerous investigations by local, state, and federal authorities, the Church's television ministry has been forced to close—resulting in the loss of employment and personal financial hardship for approximately 800 Church employees and their families, and the Church's membership and outreach ministries have been significantly reduced. This *Third Amended Complaint* explains the corrupt methods and the pattern of racketeering activity by which these results were obtained.

B. Jurisdiction and Venue:

1. This court has original jurisdiction of this action pursuant to 18 U.S.C. § 1964, and under 28 U.S.C. §§1331, 1337, and 1343.

2. Venue is proper in this Court under 18 U.S.C. § 1965 (a), and under 42 U.S.C. §§ 1391(b)(1) and (2).

C. Miscellaneous Matters:

1. Unless otherwise indicated, "during the events complained of in connection with the RICO claims" means the period from May, 1991, through at least June 9, 1993.

2. Unless otherwise indicated, "at all relevant times in connection with this litigation" means the period from May, 1991, through the present.

3. Collectively, WOF, Inc., and WOF Church are referred to as "the Church.

4. To the extent allegations contained in this pleading refer to acts of defendants occurring before November 21, 1991, as a result of defendants' fraudulent concealment, the Church could not have discovered defendants' wrongful act any earlier than November 21, 1991.

5. Each of the unlawful acts alleged below were committed with malice.

a. Exhibit 10 is an authentic copy of a memorandum authored by Sutherland or Gordon.

b. Exhibit 11 is an authentic copy of a memorandum authored by Sutherland or Gordon.

c. At the time of the November 21, 1991, broadcast, the Individual ABC Defendants new there was "no fraud on [Reverend Tilton]."

d. At the time of the November 28, 1991, broadcast, the Individual ABC Defendants new there was "no fraud on [Reverend Tilton]."

e. At the time of the July 9, 1992 broadcast, the Individual ABC Defendants new there was "no fraud on [Reverend Tilton]."

6. Unless otherwise indicated, references to "exhibits" refer to the exhibits submitted by the Church in conjunction with its *Rico Case Statement*, filed with the Court on or about May 3, 1994, which are incorporated by reference.

7. At least during the events complained of in connection with the RICO claims, the RICO Defendants comprised an association-in-fact (the "Enterprise Association") within the meaning of within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) and (d).

8. The Court has personal jurisdiction over each of the defendants.

II.
THE PARTIES:

A. The Church:

1. WOF, Inc.

a. WOF, Inc., was a Texas not-for-profit corporation located in Farmers Branch, Dallas County, Texas.

b. WOF, Inc., transferred all its assets to WOF Church on or about March 27, 1992.

c. WOF, Inc., dissolved on or about March 27, 1992.

d. WOF, Inc., sues on behalf of its former members.

e. WOF, Inc., is authorized to maintain this action, notwithstanding its dissolution, under art. 1396-7.12(A)(1) and (2), TEX. CORP. ACT.

f. During the existence of WOF, Inc., its head pastor was Reverend Tilton.

g. Between May, 1991, and on or about March 27, 1992, WOF, Inc., had approximately 8,000 local members in the Dallas area who regularly attended worship services at the Church's Farmers Branch sanctuary.

h. Between May, 1991, and on or about March 27, 1992, between 3,000 and 5,000 people normally attended WOF Inc.'s weekly Sunday morning services.

i. In addition, between May, 1991, and on or about March 27, 1992, WOF, Inc.'s services reached a national television audience in the hundreds of thousands.

j. Many viewers supported WOF, Inc., spiritually and financially and considered themselves to be members of WOF, Inc.

k. WOF, Inc., was a Christian church.

l. WOF, Inc., was exempt from federal taxation under § 501(c)(3) of the INTERNAL REVENUE CODE.

m. WOF., Inc., was a "religious organization" within the meaning of § 11.20(c) of the TEXAS PROPERTY TAX CODE.

n. WOF, Inc., and its members were and are "persons" within the meaning of 18. U.S.C. §§ 1961(3) and 1964(c).

2. WOF Church

a. WOF Church, is an unincorporated association, which sues on behalf of its members.

b. WOF Church was formed on or about March 27, 1992.

c. WOF Church is also located in Farmers Branch, Dallas County, Texas.

d. Since it was founded, the head pastor of WOF Church's has been Reverend Robert Tilton.

e. Between March 27, 1992, and October 9, 1993, WOF Church's services reached a national television audience in the hundreds of thousands.

f. Many viewers supported WOF Church spiritually and financially and considered themselves to be members of WOF Church.

g. WOF Church terminated its television ministry on or about October 9, 1993.

h. The television ministry was terminated as a direct and proximate result of the defendants' unlawful activity.

i. WOF Church is a Christian Church.

j. The plaintiff-members are those persons who are presently members of WOF Church and were mem-

bers of WOF, Inc., before its dissolution, and/or regularly attend Church services at the Church's principal sanctuary located in Farmers Branch, Texas.

k. WOF Church is exempt from federal taxation under § 501(c)(3) of the INTERNAL REVENUE CODE.

l. WOF Church is also a "religious organization" within the meaning of § 11.20(c) of the TEXAS PROPERTY TAX CODE.

m. WOF Church and its members are "persons" within the meaning of 18. U.S.C. §§ 1961(3) and 1964(c).

3. The Church's Beliefs:

a. The Church constitutes a *bona fide* church, and its religious beliefs are sincerely held.

b. One of the central beliefs of the Church and its members is the importance and necessity of tithing and the making of vows to God through the Church.

c. The Church teaches that financial support is required by the Bible and must be freely given.

d. The Church and its members also believe the expressions of faith and trust as manifested by financial vows to God through the Church, are rewarded and that the faithful will prosper physically, spiritually, and financially.

e. The class of churches that subscribes to this interpretation of the Holy Scriptures is often referred to as "prosperity" churches.

f. The message of churches that belong to this "class" is often referred to as a "prosperity message."

g. Prosperity churches teach that people can, may, and should make vows out of their need and not out of the need of the Church.

h. The Church and its members believe that God answers prayers and that God wants all people to prosper spiritually, physically and financially.

i. The Church and its members believe that God performs miracles today, just as Christ performed miracles.

j. All of the prayers that the Church offers its members are free.

k. The Church has never sold or performed any miracles.

l. The Church and its members believe that Christ performs many miracles in answer to the prayers of its ministers and of its followers.

m. The beliefs of the Church and its members are based on the Word of God as revealed in the Holy Scriptures.

n. The Church's central beliefs are summarized in *Word of Faith World Outreach Center Church-Statement* and *Word of Faith World Outreach Center Church - What We Believe*. True and correct copies were attached to the *Original Complaint* as exhibits "A" and "B," respectively.

o. Prosperity class churches believe that members of the Church should tithe through the Church, and that the tithe belongs to God.

p. In addition to giving tithes, prosperity churches teach that members should also give offerings to the church in addition to their tithe.

q. Prosperity churches are a relatively new and comparatively small, distinct religious class of churches.

r. The message of prosperity churches is also relatively new and is not accepted by nor acceptable to well-established, conventional Christian denominations

such as the Baptist, Methodist, Presbyterian, Lutheran or Catholic churches.

s. Prosperity churches are, by reason of their newness and the nonacceptance of their message by the mainstream of society, often the target of persecution, ridicule, and continuous attempts by those in the mainstream to eradicate this prosperity religious message that they abhor.

t. Prosperity churches are a protected religious class under 42 U.S.C. § 1985(3).

B. The Trinity Defendants:

1. The Trinity Foundation, Inc.:

a. The Trinity Foundation, Inc. ("Trinity Foundation") is a Texas non-profit corporation, founded by Anthony January 12, 1973.

b. Exhibit 1 is an authentic copy of the Trinity Foundation's *Articles of Incorporation* and *By-Laws*

c. The foundation occupies several houses and condominiums in Dallas, Texas, where it houses a small community of believers in a communal living arrangement.

d. At all relevant times in connection with this litigation, the Trinity Foundation was an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) and (d).

e. At all relevant times in connection with this litigation, the Trinity Foundation was a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

f. During the events complained of in connection with the RICO claims, the Trinity Foundation was employed by or associated with Capital Cities, within the meaning of 18 U.S.C. § 1962(c) and (d).

g. During the events complained of in connection with the RICO claims, the Trinity Foundation was employed by or associated with ABC, within the meaning of 18 U.S.C. § 1962(c) and (d).

h. During the events complained of in connection with the RICO claims, the Trinity Foundation was employed by or associated with ABC News, within the meaning of 18 U.S.C. § 1962(c) and (d).

i. During the events complained of in connection with the RICO claims, the Trinity Foundation was employed by or associated with the Association Enterprise, within the meaning of 18 U.S.C. § 1962(c) and (d).

2. Ole Anthony

a. Ole Anthony is the founder and, at all relevant times relating to this litigation, the President and a member of the Board of Directors of the Trinity Foundation.

b. With the exception of 1988 when he was ill, Anthony has been President of the Trinity Foundation since its inception.

c. Anthony has been a board member every year since the Trinity Foundation's inception, including 1988.

d. As relates to this case, Anthony is a man fueled by two burning passions: religious bigotry towards television ministry, and a deep desire for personal promotion through use of the media.

(1) Religious Bigotry: Desire to Shut Down The Church and its Ministries.

(a) By his own admission—Anthony has waged a "holy war" against television ministers.

(b) In sworn deposition testimony given by Anthony in *Harrision v. Tilton, et al.*, Cause No. 92-5480-B, in the 44th Judicial District

Anthony: Again, it's the sleaze factor. I . . . I don't want this on the air.

Sawyer: No.

Anthony: I'm the incoming president of the Texas Grand Jury Association, and I've served on many grand juries, and we have tried sev . . . three or four different instances to get an indictment, and it's obvious—because it's commercial fraud—but always the DA is without courage or something takes place where they won't proceed that final step, that little oomph! Well, this program can be the little oomph! that would cause a whole lot of these charlatans to be investigated. This is—I mean that's why I am so excited about this because, this thing—I mean I'm a believer, without question. I live what I believe—24 hours a day. We got AIDS—I've got an AIDS guy living in the house. Crack cocaine addicts that I have to live their battles day and night trying to get rid of the monkey. And, these guys are blaspheming my Father. Their saying that my Father rewards greed, and that's a lie from the depths of Hell.

Sawyer: Okay, let's go back on camera and I'll ask the last thing again. . . .

* * * * * *

Sawyer: And [what's] the moral, the lesson of [*sic*] these men?

Anthony: "There must needs be offenses, but woe onto whom by which the offense cometh." I believe they are the ones offending, and woe onto them.

(h) Exhibits 72 and 73 are authentic audio-video tapes made by ABC of portions of the Sawyer-Anthony interview.

(i) Gordon was present during the interview.

(j) On or about December 5, 1991—less than two weeks after the initial *PrimeTime Live* broadcast aired—Anthony told the *Dallas Observer* (Exhibit 75):

My prediction is that Word of Faith won't be around in four years, and the land where the church once stood will be a parking lot. . . . It'll be covered with cracks with weeds growing through them, and birds of flight will nest in the remains of the building.

(k) Exhibit 6 is an authentic copy of a memorandum written by Gordon or Sutherland within the course and scope of their employment for one or more of the corporate ABC Defendants.

(l) Exhibit 6 states (capitalization original):

[Anthony] HAS REAL AX [*sic*] TO GRIND OBSESSED WITH HIM [Tilton]—I DON'T FEEL TOTALLY COMFORTABLE WITH OLE ANTHONY EITHER—ON CRUSADE AGAINST HIM [Tilton] IN THE NAME OF CHRIST

(2) ***Personal Advancement: Desire to Host a Nationally Syndicated Radio and Television Talk Show.***

(a) On July 10, 1991, Trinity Foundation employee, Board member and RICO Defendant Harry Guetzlaff, on behalf of the Trinity Foundation, mailed Exhibit 7 to Dallas television station KDAF, Fox Channel 33, a detailed proposal for a weekly television talk show

called "*Night-Talk,*" to be hosted by Anthony and produced by the Trinity Foundation

(b) Exhibit 7 is an authentic copy of the proposal.

(c) Exhibit 7 described Anthony as:

the single most exciting and compelling moderator, interviewer and personality available today . . . with demonstrable success, particularly to the 18-34 demographic. He's unique: a scientist, business executive, politician, author, spy, social activist, hostage, philosopher, public speaker—the list goes on and on. He possesses two attributes critical to your desire to produce public service programming that will generate controversy and resultant ratings . . . .

* * * * * *

As [David] Letterman was to [Johnny] Carson, Ole Anthony and *Night-Talk* are to all previous talk-shows. Letterman parodies the TV talk-shows, makes fun of himself, mocks all institutions and personal posturing, asks embarrassing questions and challenges hype. So does Ole Anthony, but with the added touch of reaching out into the audience and involving them in the program.

(d) The proposal suggested simulcasting *Night-Talk* on an area FM radio station and predicted "[t]he scope and impact possibilities are phenomenal."

(e) Additionally, the proposal stated, "[t]he production of shows like *Night-Talk* is the reason Trinity Foundation exists . . ." and that, "[a]ll the traditional benefits of a not-for-profit organization would apply, including . . . tax deductions."

(f) Finally, the proposal stated: "Trinity Foundation has a proven track record of credibility with local and national media. We are able to generate an incredible amount of media coverage on short notice."

(g) The list of endorsements and references included in the proposal included defendants *Dallas Morning News* and Ed Housewright.

(h) Exhibit 3 is an authentic copy of a *Memorandum* authored by Anthony on or about December 15, 1987.

(i) Exhibit 5 is an authentic copy of a press release authored by Anthony

(j) Exhibit 5 is an authentic copy of a press release issued by the Trinity Foundation.

(k) On or about August 26, 1991, Anthony, in active concert and participation with Gordon and Cooke, interviewed Jim Moore, head of Response Media, in Tulsa, Oklahoma.

(l) During the interview, with the aid of Gordon and Cooke, Anthony told Moore about the *Night-Talk* proposal and plans to be syndicated nationally.

(m) Anthony, Gordon and Cooke also sought Moore's help in combining the program with a direct mail operation.

(n) Exhibits 13, 14 and 15 are authentic copies of audio-video tapes secretly made by Cooke, with the knowing cooperation of Gordon and Anthony, during the Moore interview.

(o) In or about December, 1991, on *Spectrum*, broadcast over Channel 5 in Dallas, Texas, and as confirmed in sworn deposition

testimony given by Anthony in *Harrision v. Tilton, et al.*, Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, Anthony stated (*see* Exhibit 51, pp. 179, 182):

I went in [to see Moore at Response Media] as myself. We were in negotiation at the time with Fox Television to produce a talk show and we went into Response Media to ask them, what's a way—how would you handle the anticipated large amount of mail that were to come in. That's what the basis upon [*sic*] going in there. That was the basis.

(p) In sworn deposition testimony given by Anthony in *Harrision v. Tilton, et al.*, Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, Anthony also testified (*see* Exhibit 52, pp. 161-62):

Q: You never lied to him?

A: I don't believe so.

* * * * * *

Q: Did you tell a lie while you were at Response Media?

A: I don't believe I did.

Q: Did you go in absolutely above board and honest with Mr. Moore and Response Media, then?

A: Except for the existence of the hidden camera .... It was covert on the part of the ABC it wasn't covert on my part. I went in as myself.

e. At all relevant times in connection with this litigation, Anthony was a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

f. At all relevant times in connection with this litigation, Anthony was employed by or associated with

the Trinity Foundation, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

g. During the events complained of in connection with the RICO claims, Anthony was employed by or associated with Capital Cities, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

h. During the events complained of in connection with the RICO claims, Anthony was employed by or associated with ABC, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

i. During the events complained of in connection with the RICO claims, Anthony was employed by or associated with ABC News, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

j. During the events complained of in connection with the RICO claims, Anthony was employed by or associated with the Enterprise Association, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

3. Harry Guetzlaff:

a. At all relevant times in connection with this litigation, Guetzlaff was an employee and board member of the Trinity Foundation.

b. At one time, before the events complained of in this lawsuit, Guetzlaff was a member of the Church.

c. Like Anthony, Guetzlaff was motivated to engage in the unlawful conduct described herein by religious bigotry, a desire to shut down the Church, and for personal desire to publicly promote Anthony, the Trinity Foundation and *Night Talk*.

d. At all relevant times in connection with this litigation, Guetzlaff was a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

e. At all relevant times in connection with this litigation, Guetzlaff was employed by or associated with the Trinity Foundation, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

f. During the events complained of in connection with the RICO claims, Guetzlaff was employed by or associated with Capital Cities, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

g. During the events complained of in connection with the RICO claims, Guetzlaff was employed by or associated with ABC, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

h. During the events complained of in connection with the RICO claims, Guetzlaff was employed by or associated with ABC News, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

i. During the events complained of in connection with the RICO claims, Guetzlaff was employed by or associated with the Enterprise Association, an enterprise engaged in, or the activities of which affected, interstate

or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

4. Powell Holloway:

a. At all relevant times in connection with this litigation, Holloway was Director of Development of the Trinity Foundation.

b. Like Anthony, Holloway was motivated to engage in the unlawful conduct described herein by religious bigotry, a desire to shut down the Church, and for personal desire to publicly promote Anthony, the Trinity Foundation and *Night Talk*.

c. At all relevant times in connection with this litigation, Holloway was a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

d. At all relevant times in connection with this litigation, Holloway was employed by or associated with the Trinity Foundation, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

e. During the events complained of in connection with the RICO claims, Holloway was employed by or associated with Capital Cities, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

f. During the events complained of in connection with the RICO claims, Holloway was employed by or associated with ABC, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

g. During the events complained of in connection with the RICO claims, Holloway was employed by or associated with ABC News, an enterprise engaged in, or

the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

h. During the events complained of in connection with the RICO claims, Holloway was employed by or associated with the Enterprise Association, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

C. The ABC Defendants:

1. Diane Sawyer:

a. Diane Sawyer ("Sawyer"), is an individual believed to reside in New York, New York, and is a reporter for ABC News.

b. Sawyer is a co-anchor of *PrimeTime Live* and narrated all three *PrimeTime Live* segments on the Church.

c. At all relevant times in connection with this litigation, Sawyer desired to shut down the Church and its ministries.

d. In a June, 1992, interstate telephone call with Connie Cohn, a woman Sawyer interviewed for the third *PrimeTime Live* broadcast, Sawyer told Cohn that she (Sawyer) "was appalled" when she saw Reverend Tilton on TV, and stated "He needs to be stopped."

e. At all relevant times in connection with this litigation, Sawyer was also motivated by greed and the desire for personal and professional profit.

f. For more than a year before the original *PrimeTime Live* broadcast concerning the Church, *PrimeTime Live's* ratings were consistently at or below a 10 point rating.

g. Exhibit 8 is an authentic ITRS Program Report for *PrimeTime Live*.

h. Exhibit 8 is a business record of ITRS within the meaning of *Fed. R. Evid.* 803(6).

i. The original November 21, 1991, broadcast aired during "sweeps" month.

j. The November 28, 1991, broadcast aired during "sweeps" month.

k. Thereafter, show's ratings increased over one-third.

l. Since January, 1994, Sawyer has received a new multi-million dollar contract from ABC

m. At all relevant times in connection with this litigation, Sawyer was a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

n. During the events complained of in connection with the RICO claims, Sawyer was employed by or associated with the Trinity Foundation, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

o. At all relevant times in connection with this litigation, Sawyer was employed by or associated with Capital Cities, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

p. At all relevant times in connection with this litigation, Sawyer was employed by or associated with ABC, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

q. At all relevant times in connection with this litigation, Sawyer was employed by or associated with ABC News, an enterprise engaged in, or the activities of

which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

r. During the events complained of in connection with the RICO claims, Sawyer was employed by or associated with the Enterprise Association, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

2. Roberta ("Robbie") Gordon:

a. Roberta Gordon ("Gordon"), is an individual believed to reside in Washington, D.C.

b. Gordon is a producer for the three *PrimeTime Live* segments concerning the Church.

c. Like Sawyer, Gordon was motivated to engage in the unlawful conduct described herein by religious bigotry, a desire to shut down the Church, and for personal and professional gain.

d. Gordon's disdain, disrespect, and contempt for the Church, its theological beliefs and those of its members—and for organized religion generally—was evidenced by her repeated derogatory, vulgar and obscene language captured on ABC's own "undercover" videotapes made during her surreptitious sojourns to Sunday morning worship services, including numerous uses of "f***" and other variations thereof, and discussions of sexual prowess and sexual response—all while in the Church's Sanctuary.

e. At all relevant times in connection with this litigation, Gordon was a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

f. During the events complained of in connection with the RICO claims, Gordon was employed by or associated with the Trinity Foundation, an enterprise engaged in, or the activities of which affected, interstate or

foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

g. At all relevant times in connection with this litigation, Gordon was employed by or associated with Capital Cities, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

h. At all relevant times in connection with this litigation, Gordon was employed by or associated with ABC, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

i. At all relevant times in connection with this litigation, Gordon was employed by or associated with ABC News, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

j. During the events complained of in connection with the RICO claims, Gordon was employed by or associated with the Enterprise Association, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

3. Jeff Cooke:

a. Defendant, Jeff Cooke ("Cooke"), is an individual believed to reside in North Hollywood, California.

b. Jeff Cooke was one of, if not the primary, cameraman who filmed the clips used in the segments about the Church.

c. Like Sawyer, Cooke was motivated to engage in the unlawful conduct described herein by religious bigotry, a desire to shut down the Church, and for personal and professional gain.

d. Cooke's disdain, disrespect, and contempt for the Church, its theological beliefs and those of its members—and for organized religion generally—was evidenced by repeated his derogatory, vulgar and obscene language captured on ABC's own "undercover" videotapes made during his surreptitious sojourns to Sunday morning worship services, including numerous uses of "f***" and other variations thereof, and discussions of sexual prowess and sexual response—all while in the Church's Sanctuary.

e. Exhibit 12 is an authentic copy of a videotape taken by Cooke in connection with the RICO Defendants' "investigation" of the Church.

f. Exhibit 70 is an authentic copy of a videotape taken by Cooke in connection with the RICO Defendants' "investigation" of the Church.

g. At all relevant times in connection with this litigation, Cooke was a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

h. During the events complained of in connection with the RICO claims, Cooke was employed by or associated with the Trinity Foundation, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

i. At all relevant times in connection with this litigation, Cooke was employed by or associated with Capital Cities, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

j. At all relevant times in connection with this litigation, Cooke was employed by or associated with ABC, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

k. At all relevant times in connection with this litigation, Cooke was employed by or associated with ABC News, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

l. During the events complained of in connection with the RICO claims, Cooke was employed by or associated with the Enterprise Association, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

4. Kelly Sutherland:

a. Kelly Sutherland ("Sutherland"), is an individual believed to reside in New York, New York.

b. Sutherland is also a producer for PrimeTime Live, and is specifically given credit as co-producer of the July 9, 1992, segment.

c. Likewise, at the conclusion of the November 21, 1991, broadcast, Sawyer specifically gave Sutherland credit and praise for her work as part of ABC's "investigative team" concerning the broadcast.

d. Like Sawyer, Sutherland was motivated to engage in the unlawful conduct described herein by religious bigotry, a desire to shut down the Church, and for personal and professional gain.

e. At all relevant times in connection with this litigation, Sutherland was a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

f. During the events complained of in connection with the RICO claims, Sutherland was employed by or associated with the Trinity Foundation, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

g. At all relevant times in connection with this litigation, Sutherland was employed by or associated with Capital Cities, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

h. At all relevant times in connection with this litigation, Sutherland was employed by or associated with ABC, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

i. At all relevant times in connection with this litigation, Sutherland was employed by or associated with ABC News, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

j. During the events complained of in connection with the RICO claims, Sutherland was employed by or associated with the Enterprise Association, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

5. Capital Cities/ABC Inc.

a. Capital Cities/ABC Inc. ("Capital Cities"), is a New York corporation.

b. Capital Cities is the corporate employer, or otherwise ratified the actions, of the Individual ABC and Doe Defendants

c. At all relevant times in connection with this litigation, Capital Cities was a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

d. At all relevant times in connection with this litigation, Capital Cities was an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) and (d).

e. During the events complained of in connection with the RICO claims, Capital Cities was employed by or associated with the Trinity Foundation, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

f. At all relevant times in connection with this litigation, Capital Cities was employed by or associated with ABC, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

g. At all relevant times in connection with this litigation, Capital Cities was employed by or associated with ABC News, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

During the events complained of in connection with the RICO claims, Capital Cities was employed by or associated with the Enterprise Association, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

6. American Broadcasting Companies, Inc.:

a. American Broadcasting Companies, Inc. ("ABC"), is a Delaware Corporation. ABC is believed to be a subsidiary of Capital Cities.

b. ABC is the corporate employer, or otherwise ratified the actions, of the Individual ABC and Doe Defendants

c. At all relevant times in connection with this litigation, ABC was a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

d. At all relevant times in connection with this litigation, ABC was an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) and (d).

e. During the events complained of in connection with the RICO claims, ABC was employed by or associated with the Trinity Foundation, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962 (c) and (d).

f. At all relevant times in connection with this litigation, ABC was employed by or associated with Capital Cities, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

g. At all relevant times in connection with this litigation, ABC was employed by or associated with ABC News, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

h. During the events complained of in connection with the RICO claims, ABC was employed by or associated with the Enterprise Association, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

7. ABC News, Inc.:

a. ABC News, Inc. ("ABC News"), is a Delaware Corporation. ABC News is believed to be a subsidiary of Capital Cities.

b. ABC News is the corporate employer, or otherwise ratified the actions, of the Individual ABC and Doe Defendants

c. At all relevant times in connection with this litigation, ABC News was a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

d. At all relevant times in connection with this litigation, ABC News was an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) and (d).

e. During the events complained of in connection with the RICO claims, ABC News was employed by or associated with the Trinity Foundation, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

f. At all relevant times in connection with this litigation, ABC News was employed by or associated with Capital Cities, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

g. At all relevant times in connection with this litigation, ABC News was employed by or associated with ABC, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

h. During the events complained of in connection with the RICO claims, ABC News was employed by or associated with the Enterprise Association, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

D. The Doe Defendants:

1. The Bank Doe Defendants:

a. As is described in greater detail below, one or more employees of Commercial Bank and Trust ("the Bank"), in Tulsa, Oklahoma ("the Bank Doe Defendants" or "Bank Does"), operated as employee or agent

for one or more of the other RICO Defendants to steal mail, money, prayer requests and other property of the Church that was in the custody of the Bank and moving as part of interstate commerce.

b. At all relevant times in connection with this litigation, the Bank Does were "persons" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

c. At all relevant times in connection with this litigation, the Bank was an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) and (d).

d. During the events complained of in connection with the RICO claims, the Bank Does were employed by or associated with the Bank, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

e. At least during the events complained of in connection with the RICO claims, the Bank Does were employed by or associated with Capital Cities, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

e. At least during the events complained of in connection with the RICO claims, the Bank Does were employed by or associated with ABC, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

f. At least during the events complained of in connection with the RICO claims, the Bank Does were employed by or associated with ABC News, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

g. At least during the events complained of in connection with the RICO claims, the Bank Does were employed by or associated with the Enterprise Association, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

2. The IDM Doe Defendants:

a. As is described in greater detail below, one or more employees of Internal Data Management ("IDM"), in Tulsa, Oklahoma ("the IDM Doe Defendants" or "IDM Does"), operated as an employee or agent for one or more of the other RICO Defendants to steal mail, prayer requests and other property of the Church that was in the custody of IDM and moving as, or as part of, interstate commerce, and to steal one or more computer data disks—and the confidential, constitutionally protected information contained thereon—all property of the Church or IDM.

b. At all relevant times in connection with this litigation, the IDM Does were "persons" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

c. At all relevant times in connection with this litigation, IDM was an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) and (d).

d. During the events complained of in connection with the RICO claims, the IDM Does were employed by or associated with IDM, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

e. At least during the events complained of in connection with the RICO claims, the IDM Does were employed by or associated with Capital Cities, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

f. At least during the events complained of in connection with the RICO claims, the IDM Does were employed by or associated with ABC, an enterprise engaged in, or the activities of which affected, interstate or

foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

g. At least during the events complained of in connection with the RICO claims, the IDM Does were employed by or associated with ABC News, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

h. At least during the events complained of in connection with the RICO claims, the IDM Does were employed by or associated with the Enterprise Association, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

3. The Church Doe Defendants:

a. As is described in greater detail below, one or more employees of the Church ("the Church Doe Defendants" or "Church Does"), operated as agents for one or more of the other RICO Defendants to steal "white mail" and other property of the Church that was in the custody of the Church.

b. At all relevant times in connection with this litigation, the Church Does were "persons" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

c. From before May, 1991, through March 27, 1992, WOF, Inc., was an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) and (d).

d. From March 27, 1992, through the present, WOF Church has been an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) and (d).

e. During the events complained of in connection with the RICO claims, the Church Does were employed by or associated with the WOF, Inc., and/or WOF Church, enterprises engaged in, or the activities of which

affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

f. At least during the events complained of in connection with the RICO claims, the Church Does were employed by or associated with the Trinity Foundation, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

g. At least during the events complained of in connection with the RICO claims, the Church Does were employed by or associated with Capital Cities, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

h. At least during the events complained of in connection with the RICO claims, the Church Does were employed by or associated with ABC, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

i. At least during the events complained of in connection with the RICO claims, the Church Does were employed by or associated with ABC News, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

j. At least during the events complained of in connection with the RICO claims, the Church Does were employed by or associated with the Enterprise Association, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

4. The Joyce-Pollard Doe Defendants:

a. As is described in greater detail below, one or more employees or servants of the Church's attorneys, the Tulsa law firm of Joyce & Pollard ("the Joyce-Pollard Doe Defendants" or "Joyce-Pollard Does"), operated as agents for one or more of the other RICO Defendants to steal confidential attorney-client communications, documents protected by the attorney work-product privilege, and other records and property of Joyce & Pollard or the Church that was in the custody of Joyce & Pollard.

b. At all relevant times in connection with this litigation, the Joyce-Pollard Does were "persons" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) and (d).

c. At all relevant times in connection with this litigation, Joyce & Pollard was an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) and (d).

d. During the events complained of in connection with the RICO claims, the Joyce-Pollard Does were employed by or associated with Joyce & Pollard, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

e. At least during the events complained of in connection with the RICO claims, the Joyce-Pollard Does were employed by or associated with Capital Cities, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

f. At least during the events complained of in connection with the RICO claims, the Joyce-Pollard Does were employed by or associated with ABC, an enterprise engaged in, or the activities of which affected,

interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

g. At least during the events complained of in connection with the RICO claims, the Joyce-Pollard Does were employed by or associated with ABC News, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

h. At least during the events complained of in connection with the RICO claims, the Joyce-Pollard Does were employed by or associated with the Enterprise Association, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

E. The BELO Defendants:[2]

1. Defendant, A.H. Belo Corporation ("Belo"), owner of WFAA-TV, Dallas, Texas, and also owner of The Dallas Morning News, a newspaper, is located in Dallas, Texas.

2. Defendant, WFAA-TV ("WFAA" or "Channel 8"), is a Texas corporation.

3. Defendant, Bill Brown ("Brown"), believed to reside in Dallas County, Texas, and is a reporter for WFAA-TV, Dallas, Texas.

4. Defendant, The Dallas Morning News ("Dallas Morning News"), is a newspaper located in Dallas County, Texas.

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[2] Plaintiffs' *Third Amended Complaint* does not contain any claims against these defendants. The paragraphs contained in this section are solely for identification purposes and relate solely to the Civil Rights claims previously dismissed and which are subject to later appeal. Accordingly, as presently pled, the *Third Amended Complaint* does not require an answer from any of the Belo Defendants.

5. Defendant, Ed Housewright ("Housewright"), an individual residing in Dallas, County, Texas, is a member of the Trinity Foundation and is an Editor for the Dallas Morning News.

6. Defendant, Steve Blow ("Blow"), is believed to reside in Dallas County, Texas.

7. Defendant, Ed Bark ("Bark"), is believed to reside in Dallas County, Texas.

III.
CLAIM FOR RELIEF: CIVIL RICO

A. Conducting The Affairs Of An Enterprise Through A Pattern Of Racketeering Activity: 18 U.S.C. § 1962(c).

1. As is more fully described below, at least during the events complained of in connection with the RICO claims, and in furtherance of the RICO Defendants' schemes to defraud and schemes to shut down the Church, both also more fully described below:

a. The Trinity Foundation conducted or participated, directly or indirectly, in the conduct of the affairs of Capital Cities, ABC News, ABC, the Bank, the Church, IDM, Joyce & Pollard, and the Association Enterprise through a pattern of racketeering activity including, but not limited to, the predicate acts listed further below.

b. Anthony conducted or participated, directly or indirectly, in the conduct of the affairs of the Trinity Foundation, Capital Cities, ABC News, ABC, the Bank, the Church, IDM, Joyce & Pollard, and the Association Enterprise through a pattern of racketeering activity including, but not limited to, the predicate acts listed further below.

c. Guetzlaff conducted or participated, directly or indirectly, in the conduct of the affairs of the Trinity Foundation, Capital Cities, ABC News, ABC, the Bank, the Church, IDM, Joyce & Pollard, and the Association Enterprise through a pattern of racketeering activity including, but not limited to, the predicate acts listed further below.

d. Holloway conducted or participated, directly or indirectly, in the conduct of the affairs of the Trinity Foundation, Capital Cities, ABC News, ABC, the Bank, the Church, IDM, Joyce & Pollard, and the Association

Enterprise through a pattern of racketeering activity including, but not limited to, the predicate acts listed further below.

e. Sawyer conducted or participated, directly or indirectly, in the conduct of the affairs of the Trinity Foundation, Capital Cities, ABC News, ABC, the Bank, the Church, IDM, Joyce & Pollard, and the Association Enterprise through a pattern of racketeering activity including, but not limited to, the predicate acts listed further below.

f. Gordon conducted or participated, directly or indirectly, in the conduct of the affairs of the Trinity Foundation, Capital Cities, ABC News, ABC, the Bank, the Church, IDM, Joyce & Pollard, and the Association Enterprise through a pattern of racketeering activity including, but not limited to, the predicate acts listed further below.

g. Cooke conducted or participated, directly or indirectly, in the conduct of the affairs of the Trinity Foundation, Capital Cities, ABC News, ABC, the Bank, the Church, IDM, Joyce & Pollard, and the Association Enterprise through a pattern of racketeering activity including, but not limited to, the predicate acts listed further below.

h. Sutherland conducted or participated, directly or indirectly, in the conduct of the affairs of the Trinity Foundation, Capital Cities, ABC News, ABC, the Bank, the Church, IDM, Joyce & Pollard, and the Association Enterprise through a pattern of racketeering activity including, but not limited to, the predicate acts listed further below.

i. Capital Cities conducted or participated, directly or indirectly, in the conduct of the affairs of the Trinity Foundation, ABC News, ABC, the Bank, the Church, IDM, Joyce & Pollard, and the Association En-

terprise through a pattern of racketeering activity including, but not limited to, the predicate acts listed further below.

j. ABC News conducted or participated, directly or indirectly, in the conduct of the affairs of the Trinity Foundation, Capital Cities, ABC, the Bank, the Church, IDM, Joyce & Pollard, and the Association Enterprise through a pattern of racketeering activity including, but not limited to, the predicate acts listed further below.

k. ABC conducted or participated, directly or indirectly, in the conduct of the affairs of the Trinity Foundation, Capital Cities, ABC News, the Bank, the Church, IDM, Joyce & Pollard, and the Association Enterprise through a pattern of racketeering activity including, but not limited to, the predicate acts listed further below.

2. As a direct, proximate result of the RICO Defendants' conduct, the Church has been damaged in its business or property in an amount to be proved at trial.

B. Conspiracy: 18 U.S.C. § 1962(d).

1. At least during the events complained of in connection with the RICO claims, in furtherance of the RICO Defendants' schemes to defraud and schemes to shut down the Church, the RICO Defendants conspired, within the meaning of 18 U.S.C. §1962(d), to conduct the affairs of the Trinity Foundation through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(c).

2. At least during the events complained of in connection with the RICO claims, in furtherance of the RICO Defendants' schemes to defraud and schemes to shut down the Church, the RICO Defendants conspired, within the meaning of 18 U.S.C. §1962(d), to conduct the affairs of Capital Cities through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(c).

3. At least during the events complained of in connection with the RICO claims, in furtherance of the RICO Defendants' schemes to defraud and schemes to shut down the Church, the RICO Defendants conspired, within the meaning of 18 U.S.C. §1962(d), to conduct the affairs of ABC News through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(c).

4. At least during the events complained of in connection with the RICO claims, in furtherance of the RICO Defendants' schemes to defraud and schemes to shut down the Church, the RICO Defendants conspired, within the meaning of 18 U.S.C. §1962(d), to conduct the affairs of ABC through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(c).

5. At least during the events complained of in connection with the RICO claims, in furtherance of the RICO Defendants' schemes to defraud and schemes to shut down the Church, the RICO Defendants conspired, within the meaning of 18 U.S.C. §1962(d), to conduct the affairs of the Bank through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(c).

6. At least during the events complained of in connection with the RICO claims, in furtherance of the RICO Defendants' schemes to defraud and schemes to shut down the Church, the RICO Defendants conspired, within the meaning of 18 U.S.C. §1962(d), to conduct the affairs of IDM through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(c).

7. At least during the events complained of in connection with the RICO claims, in furtherance of the RICO Defendants' schemes to defraud and schemes to shut down the Church, the RICO Defendants conspired, within the meaning of 18 U.S.C. §1962(d), to conduct the affairs of Joyce & Pollard through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(c).

8. At least during the events complained of in connection with the RICO claims, in furtherance of the RICO Defendants' schemes to defraud and schemes to shut down the Church, the RICO Defendants conspired, within the meaning of 18 U.S.C. §1962(d), to conduct the affairs of the Association Enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(c).

9. In furtherance of these conspiracies, the RICO Defendants engaged in numerous overt acts, including, but not limited to, the predicate acts specified further below.

10. As a proximate result of the RICO Defendants' unlawful conduct, the Church was damaged in its business or property in an amount to be proven at trial.

C. Circumstances Of The Mail, Wire, And Bank Frauds:

1. As is more fully described both elsewhere herein, particularly as is detailed in connection with specific predicate acts of mail, wire, and bank fraud below, beginning in or about the May of 1991 and continuing thereafter, the RICO Defendants—motivated both by religious bigotry (including a desire to shut down the Church), and by personal and professional greed and ambition (including fraudulently increasing the ratings of *PrimeTime Live* and the resulting corporate profits)—maliciously devised and engaged in a scheme or artifice to defraud. The scheme or artifice to defraud included:

a. a scheme whereby the RICO Defendants, in active concert and participation with each other, would maliciously create, publish, circulate and nationally broadcast "news" stories about the Church and its pastor that they knew to be false and fraudulent and based on "evidence" fraudulently and illegally manufactured by the RICO Defendants;

b. a scheme to defraud the Bank of the honest and loyal services of one or more of its employees within the meaning of 18 U.S.C. § 1346 by, *inter alia*, enlisting the cooperation of one or more Bank Does—through means

at present unknown, *e.g.*, perhaps bribery or extortion, to steal mail, money, prayer requests and other property of the Bank or the Church in the custody of the Bank and moving as part of interstate commerce;

c. a scheme to defraud IDM of the honest and loyal services of one or more of its employees within the meaning of 18 U.S.C. § 1346 by, *inter alia*, enlisting the cooperation of one or more IDM Does—through means at present unknown, *e.g.*, perhaps bribery or extortion, to steal prayer requests and other property of IDM or the Church in the custody of IDM and moving as part of interstate commerce;

d. a scheme to defraud the Church of the honest and loyal services of one or more of its employees within the meaning of 18 U.S.C. § 1346 by, *inter alia*, enlisting the cooperation of one or more Church Does—through means at present unknown, *e.g.*, perhaps bribery or extortion, to steal "white mail" and other property of the Church and moving as part of interstate commerce;

e. a scheme or artifice to obtain prayer requests, wages, confidential and constitutionally protected information concerning the Church and its members, and other property and information of the Church by means of false or fraudulent pretenses and representations, including, *inter alia*, infiltration of *Success in Life* by operatives of the RICO Defendants and infiltration of the Church by seeking employment with the Church under false pretenses;

f. a scheme to defraud Joyce & Pollard of the honest and loyal services of one or more of its employees within the meaning of 18 U.S.C. § 1346 by, *inter alia*, enlisting the cooperation of one or more Joyce-Pollard Does—through means at present unknown, *e.g.*, perhaps bribery or extortion, to steal confidential attorney-client communications, documents protected by the attorney

work-product privilege, and other records and property of Joyce & Pollard or the Church that was in the custody of Joyce & Pollard.

g. a scheme to instigate local, state, and federal criminal investigations of the Church, Reverend Tilton, and the Church's ministries using false and fraudulent evidence created by the RICO Defendants.

D. The Scheme To Shut Down The Church:

The RICO Defendants also devised a scheme and conspired to shut down the church through a pattern of racketeering activity.

E. The Conspiracy And The Racketeering Activity

1. Introduction:

a. To succeed in their religious and secular objectives, the RICO Defendants had to "get" Reverend Tilton; that is, to discredit him, his ministry, and the sincerity of his religious beliefs and those of at least some of his followers—those who professed to having been healed or to have received other miracles through the Church's ministry.

(1) Exhibit 15 is a true and correct transcribed excerpt of a conversation between Gordon, to Anthony and Cooke on the way away from Response Media after their "undercover" interview with Moore on or about August 26, 1991.

(2) On the way away from Response Media after their "undercover" interview with Moore on or about August 26, 1991, Gordon told Cooke and Anthony: "I don't feel like we've got him nailed right now."

(3) In the Sawyer interview of Anthony, depicted in Exhibits 72 and 73, Sawyer stated to An-

thony, in the presence of Gordon: "But, I don't think you can get to him."

(4) During a surreptitious visit to the Church on Sunday, August 25, 1991, Gordon told Cooke, while in the Church and with reference to a healed parishioner: "I love the bit where they cried. I hope you got it. If we f****d up again . . . I love the tears, the people with the tears, because if we f****d up one more time, I'll die!"

b. The means to this end were three nationally televised broadcasts of *PrimeTime Live*, broadcast on November 21 and 28, 1991, and July 9, 1992. Although the numerous knowingly and maliciously false, fraudulent, and misleading statements made concerning Reverend Tilton, the Church, and its ministries will be detailed further below, the crux of the broadcasts' broadsides were the representations made to the public that, contrary to promises allegedly made by Reverend Tilton, "thousands" of prayer requests received from followers were callously thrown "in the garbage at the bank [and] in the marketing research center."

c. All of this "garbage" was represented to have been "found" during three separate "trash sweeps" each conducted over several days in September and October, 1991, by one or more of the Trinity Defendants at the direction and under the supervision of Gordon and other ABC representatives.

(1) The first "trash sweep" allegedly occurred September 9-12, 1991.

(2) The second "trash sweep" allegedly occurred September 23-28, 1991.

(3) The third "trash sweep" allegedly occurred October 9-12, 1991.

d. In furtherance of the RICO Defendants' aims, Anthony, Guetzlaff, and Holloway created a *Tilton Evidence Log*.

e. Exhibit 44 is an authentic copy of the *Tilton Evidence Log*.

f. The *Tilton Evidence Log* purports to be a detailed inventory of items Anthony, Guetzlaff, and Holloway claim to have "found" in the trash, including the date and location of each "find."

g. In sworn deposition testimony given by Anthony in *Harrision v. Tilton, et al.*, Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, Anthony swore to the accuracy of the *Tilton Evidence Log* (*see, e.g.*, Vol. IV, pp. 118-19).

h. n sworn deposition testimony given by Guetzlaff in *Harrision v. Tilton, et al.*, Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, Guetzlaff swore to the accuracy of the *Tilton Evidence Log*.

i. In sworn deposition testimony given by Holloway in *Harrision v. Tilton, et al.*, Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, Holloway swore to the accuracy of the *Tilton Evidence Log*.

j. In sworn deposition testimony given by Anthony in *Harrision v. Tilton, et al.*, Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, concerning the *Tilton Evidence Log*, Anthony testified (Exhibit 52, pp. 196-197):

> Q. If after all of the dust has settled and we've gone through all these documents and it were to be shown to you . . . that your characterization of documents is absolutely incorrect and that it, in fact, is not possible for some of the documents to be obtained from the places and at the times that your log

shows them to have been obtained, I mean absolutely not possible, and this could be established to you by way of evidence which you no doubt would believe, would you be willing to give a public apology to Reverend Tilton and Word of Faith Church?

A: I'd get down on my knees before him.

2. The Church's Mail:

Key to understanding how the RICO Defendants' scheme came unraveled is an understanding of how the Church handled the tens of thousands of pieces of mail it received monthly from followers.

a. "Regular Mail"

(1) On a regular basis, the Church mails numerous items of correspondence to "partners" who have asked that their names be placed on the Church's mailing list.

(2) The Church does no "prospect" mailing.

(3) Mail is only sent to persons who have asked that their name be placed on the mailing list.

(4) Often, these mailings include preprinted materials or other items that the partner can return to the Church in an enclosed preaddressed envelope, such as prayer cloths, vials of Holy Water obtained from the River Jordan, prayer requests that the partner can fill out and mail back in, and which Reverend Tilton has promised to pray over.

(5) Some of the items sent to partners are intended for their keeping and not to be returned to the church.

(6) Return mail items received from a partner are described as "regular mail."

(7) All regular mail is created by the Church and its employees, and is printed in Tulsa, Oklahoma, by a company called Response Media.

(8) Response Media acts strictly as a printer for the Church.

b. "White Mail"

(1) The Church also routinely receives thousands of unsolicited pieces of mail initiated by a non-partner sender, such as a request to become a partner and be placed on the mailing list, a personal letter or note on the sender's own stationery, *etc.*

(2) These items are referred to as "white mail" because they usually come in the sender's own white envelope.

(3) Neither the Church nor Pastor Tilton have ever made any public representations or promises concerning how "white mail" will be processed or handled.

c. Mail Processing:

(1) During the events complained of in connection with the RICO claims, to ensure accountability and to provide reliable financial records for budgetary, tax and auditing purposes of both the Church and its partners—and precisely to avoid allegations of financial impropriety—the Church established a sophisticated document and financial accounting system to account for every piece of mail received and every penny donated to the Church.

(2) Four different entities were involved: the United States Postal Service, Commercial Bank & Trust Co. of Tulsa, Oklahoma ("the Bank"), Internal Data Management of Tulsa ("IDM"), and the Church. *See* Exhibits 34, 42, 43, and 56-61.

Step 1: The United States Postal Service

(3) Upon receipt in Dallas of mail addressed to the Church—regular or white—the United States Postal Service, without delivering it to the Church, automatically forwards the mail to the Postal Service in Tulsa.

(4) Upon arrival in Tulsa, the United States Postal Service delivers the mail to the Bank's branch office, not the main downtown Bank office.

Step 2: The Bank

(5)

(a) checks to see if there is a check or money in the envelope and, if so, remove it;

(b) notes the amount, if any, on the front of the envelope in a color-coded ink;

(c) each Bank employee is assigned a different color ink;

(d) returns all other contents of the envelope to the envelope; and

(e) sorts the envelops for batching.

(6) Daily receipts are totaled and recorded on a *Batch Control Card* and all moneys are deposited into the Church's account.

(7) All items are then bagged in Postal Service bags and forwarded by courier to IDM.

(8) Nothing is discarded by the Bank.

Step 3: IDM

(9) Upon receipt by IDM:

(a) the items are counted and the count checked against the *Batch Control Card* and, if necessary, reconciliation reports are sent to the Bank;

(b) the items are then sorted into batches of 40 and assigned to an IDM employee who reads every item of an envelope's contents to determine appropriate further handling;

(c) all preprinted "regular mail" items to be returned to the Church contain partner code numbers that facilitate identification of the partner and corresponding recordkeeping;

(d) accordingly, for "regular mail" the IDM employee notes the coded numbers on the outside of the envelope;

(e) if the envelope is empty, however—and therefore contains no coded preprinted material—the IDM employee writes "LU" on the outside of the envelope as an indication that IDM must "look-up" that partner's records in the computer;

(f) the amount of any donation noted on the outside of the envelope by the Bank employee is recorded by IDM in a computerized *Partner Record Report* for each partner;

(g) prayer requests and similar items of "regular mail" requiring further attention by Reverend Tilton or the Church and shipped to Dallas by special courier for Reverend Tilton to pray over;

(h) prayer requests and similar items of "white mail," concerning which the Church has made no promises, are shipped to the Church in Dallas to be prayed over in the Church Sanctuary by an early morning intercessory prayer group, and summarized in computer generated print-outs and sent to Reverend Tilton for prayer;

(i) all envelopes—whether regular or white mail—are saved in batches of forty for at least four months in case the partner has any questions about the details reflected on the statement periodically sent to the partner;

(j) after the retention period, employees of IDM took the envelopes to a commercial company for destruction, and none of the envelopes were disposed of at IDM.

Step 4: The Church

(10) Upon receipt at the Church in Farmers Branch, prayer requests and other necessary regular mail items are delivered to Reverend Tilton to be prayed over.

(11) White mail is prayed over in the Church Sanctuary by an early morning intercessory prayer group.

(12) White mail is also summarized in computer generated print-outs prayed over by Reverend Tilton.

3. ***The Preliminary Injunction Hearing in Tilton v. Capital Cities and the Faked "Trash":***

a. During the events complained of in connection with the RICO claims, numerous persons employed by or associated with either the ABC Defendants or the Trinity Foundation, enterprises engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d), caused their names to be placed on the Church's mailing list for the purpose of receiving mail from the Church.

b. In at least some instances, these persons used fictitious names, or other false pretenses to obtain mail from the Church.

c. Exhibit 71 (Tape 205) is an authentic copy of a videotape made by the ABC Defendants in connection with their "investigation" of the Church.

d. Exhibit 71 contains shots of mailings sent out by Robert Tilton or the Church.

e. ABC journalists received the mailings depicted in Exhibit 71 directly from the Church and through others on the Church's mailing list.

f. The "others on the Church's mailing list" through whom some of the items depicted in Exhibit 71 were obtained, are all persons employed by or associated with the Trinity Foundation, an enterprise engaged in, or the activities of which affected, interstate or foreign commerce within the meaning of 18 U.S.C. § 1962(c) and (d).

g. None of the materials that are pictured in Exhibit 71 were found in the trash.

h. However, during the portion of the November 21, 1991, and July 9, 1992, *PrimeTime Live* broadcasts in which Sawyer states, "And those items that people have prayed over and sent in, believing Robert Tilton would take them and pray over them too? If some make it to Tilton, there are thousands that didn't," the video being shown is a portion of videotape taken from Exhibit 71.

i. Exhibit 66 is a correct copy of portions of the transcript of a motions hearing held on December 1, 1993, in *Tilton v. Capital Cities, et al.*, Case No. 92-C-1032, in the United States District Court for the Northern District of Oklahoma, before the Honorable John L. Wagner, United States Magistrate Judge.

j. Exhibit 67 is an authentic copy of a letter from an attorney for the ABC Defendants to J.C. Joyce.

k. In both Exhibit 66 and Exhibit 67, the attorney for the ABC Defendants admits that the items depicted in Exhibit 71 were direct mail items received by representatives of the Corporate ABC Defendants, and never mailed back to the Church.

l. On June 2, 3, 7 and 9, 1993, a preliminary injunction hearing was held in *Tilton v. Capital Cities, et al.*, Case No. 92-C-1032, in the United States District Court for the Northern District of Oklahoma, before the Honorable Thomas R. Brett, United States District Judge.

m. Exhibit 56 is a true copy of portions of the testimony given under oath at the hearing.

n. Exhibit 57 is a true copy of portions of the testimony given under oath at the hearing.

o. Exhibit 58 is a true copy of portions of the testimony given under oath at the hearing, and of Exhibit 586, admitted without objection by the ABC Defendants at the hearing.

p. Comparison of the items the RICO Defendants claim to have "found" in the trash with the envelope postmarks, the Bank's *Batch Control Cards*, and IDM's *Partner Record Reports* reveal that none of the identifiable items processed by the Bank or IDM and alleged to have been found in the trash by the RICO Defendants could have been found where or when the RICO Defendants claim to have found them.

q. None of the RICO Defendants have even a single postmarked envelope for any item depicted in and broadcasts as having been returned-mailed to the Church and processed either by the Bank or IDM.

r. Every item depicted in the *PrimeTime Live* broadcasts as "trash" consisted of either:

(1) Church mailings received directly by ABC operatives who had fraudulently placed their names on the Church's mailing lists, and which had never been mailed back to the Church;

(2) items obtained from the Church by the RICO Defendants while surreptitiously attending worship services at the Church, and which also were never mailed back in to the Church;

(3) "regular mail" and other items stolen by the RICO Defendants from the bank and data processing company which initially processed the Church's mail; or

(4) "white mail" stolen from either the Bank or the Church.

s. After this evidence was presented at the preliminary injunction hearing concerning the mail procedures used by the Church, Anthony, Guetzlaff, and Holloway, in cooperation with attorneys representing the ABC Defendants in *Tilton v. Capital Cities, et al.*, signed affidavits in that federal court proceeding recanting their earlier testimony concerning the *Tilton Evidence Log*.

t. Exhibit 62 is an authentic copy of Anthony's affidavit in *Tilton v. Capital Cities, et al.*

u. Exhibit 63 is an authentic copy of Holloway's affidavit in *Tilton v. Capital Cities, et al.*

v. Exhibit 64 is an authentic copy of Guetzlaff's affidavit in *Tilton v. Capital Cities, et al.*

4. The Casey Mailing:

a. On or about June 10, 1991, from Rockford, Illinois, Church partner Wilfred Casey mailed a prayer request and $50.00 donation addressed to the Church.

b. The *Tilton Evidence Log* entry relating to Casey's mailing indicates that the prayer request was

"found" outside the Bank's branch office on September 10, 1991.

c. Anthony, Guetzlaff, and Holloway each initialed this entry.

d. In sworn deposition testimony given by Guetzlaff in *Harrision v. Tilton, et al.,* Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, Guetzlaff testified that Casey's prayer request was found "September 10th, 1991, at the branch bank."

e. In sworn deposition testimony given by Holloway in *Harrision v. Tilton, et al.,* Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, Holloway testified Casey's prayer request was found September 10, 1991, outside the branch bank.

f. Casey's mailing was processed by the Bank on September 10, 1991.

(1) The outside of the envelope contains the monetary notation ".67¢"; and

(2) The notation is made in purple ink.

g. Neither before nor after June 10, 1991, has Casey ever made a contribution to the Church that was less than $10.00.

h. Neither before nor after June 10, 1991, has Casey ever made a contribution to the Church that was not in a whole dollar amount.

i. Casey's envelope was processed by IDM on September 17, 1991.

(1) The envelope was empty when it arrived at IDM;

(2) The envelope contains an "LU" notation by the IDM employee who processed the envelope.

j. Casey's prayer request was not found outside the branch Bank on September 10, 1991.

5. The McDuffie Mailing:

a. On or about July 12, 1991, from Simpsonville, South Carolina, Church partner Matilda McDuffie mailed a prayer request and $100.00 donation addressed to the Church.

b. The *Tilton Evidence Log* entry relating to McDuffie's mailing indicates that the prayer request was "found" outside the branch Bank on October 9, 1991.

c. Anthony, Guetzlaff, and Holloway each initialed this entry.

d. In sworn deposition testimony given by Anthony in *Harrision v. Tilton, et al.*, Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, Anthony testified that McDufie's prayer request was found October 9, 1991, at the branch Bank.

e. In sworn deposition testimony given by Guetzlaff in *Harrision v. Tilton, et al.*, Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, Guetzlaff testified that McDufie's prayer request was found October 9, 1991, at the branch bank.

f. In sworn deposition testimony given by Holloway in *Harrision v. Tilton, et al.*, Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, Holloway testified that McDufie's prayer request was found October 9, 1991, at the branch Bank.

g. McDufie's mailing was processed by the Bank on September 3, 1991.

(1) The outside of the envelope contains the monetary notation "$11.23"; and

(2) The notation is made in purple ink.

h. No "trash sweep" was conducted on September 3, 1991.

i. Neither before nor after July 12, 1991, has McDuffie ever made a contribution to the Church that was not in a whole dollar amount.

j. McDuffie envelope was processed by IDM on September 11, 1991.

(1) The envelope was empty when it arrived at IDM;

(2) The envelope contains an "LU" notation by the IDM employee who processed the envelope.

k. McDuffie's prayer request was not found outside the branch Bank on October 9, 1991.

6. The Bray Mailing:

a. On or about June 12, 1991, from Jennings, Louisiana, Church partner David Bray mailed a prayer request and $100.00 donation addressed to the Church.

b. The *Tilton Evidence Log* entry relating to Bray's mailing indicates that the prayer request was "found" outside IDM on October 11, 1991.

c. Anthony, Guetzlaff, and Holloway each initialed this entry.

d. In sworn deposition testimony given by Anthony in *Harrision v. Tilton, et al.,* Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, Anthony testified that Bray's prayer request was found October 11, 1991, at IDM.

e. In sworn deposition testimony given by Guetzlaff in *Harrision v. Tilton, et al.*, Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, Guetzlaff testified that Bray's prayer request was found October 11, 1991, at IDM.

f. In sworn deposition testimony given by Holloway in *Harrision v. Tilton, et al.*, Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, Holloway testified that Bray's prayer request was found October 11, 1991, at IDM.

g. Bray's mailing was processed by the Bank on September 10, 1991.

(1) The outside of the envelope contains the monetary notation of $2.00; and

(2) The notation is made in purple ink.

h. Neither before nor after June 12, 1991, has Bray ever made a contribution to the Church that was not in a whole dollar amount.

i. Neither before nor after June 12, 1991, has Bray ever made a contribution to the Church that was less than $50.00.

j. Bray's envelope was processed by IDM on September 17, 1991.

(1) The envelope was empty when it arrived at IDM;

(2) The envelope contains an "LU" notation by the IDM employee who processed the envelope.

k. Bray's prayer request was not found outside IDM on October 11, 1991.

F. Other Aspects of the Conspiracy and the Pattern of Racketeering Activity:

1. Anthony was first contacted by Sutherland by long distance telephone call in May, 1991, to enlist his involvement in the "investigation."

2. On May 28th, Anthony mailed a letter to Sutherland in furtherance of the conspiracy, explaining the basis for his attacks on televised religious broadcasts.

3. On or about August 20, 1991, Cooke, accompanied by Gordon, applied for employment with the Church.

4. In connection with the application process, Cooke furnished the Church with a resume.

5. Exhibit 26 contains an authentic copy of the resume.

6. The resume contained false and fictitious references.

7. This subsequently, reasonably, and forseeably caused the use of interstate telephone communications between the Church and the references listed on the resume submitted by Cooke.

8. Several times one or more of the RICO Defendants, including Cooke Sawyer, Gordon, and Sutherland surreptitiously attended the Church's worship services with "undercover" cameras and microphones rolling.

9. On several of the tapes, Gordon and Cooke can be heard to refer to Church employees or "parishioners" as "one of us" or in a manner indicating that they were working in conjunction with Church employees.

10. Specifically, or August 25, 1991, while leaving the Church after Sunday services, Gordon told Cooke (in reference to a Church employee she had spotted): "There goes Lee with the garbage."

11. On August 26, 1991, Gordon, Cooke, and Anthony jointly conducted an "undercover" interview of Response Media president, Jim Moore.

12. On at least two occasions in October, 1991, under the direction of Gordon, and in active concert and participation with Anthony, an ABC employee (Ellen Levy) and four representatives of the Trinity Foundation, using false pretenses, posed as telephone answers for the Church's *Success In Life* ministry for the purpose of obtaining confidential information or other property of the Church.

13. In doing so, they:

a. engaged in numerous interstate and foreign phone calls with viewers;

b. violated wiretap laws by recording phone conversations being engaged in by other *Success In Life* volunteers who had not consented to the eavesdropping; and

c. at the conclusion of one of the infiltrations stole a number of prayer requests.

14. In May, 1994, attorneys representing the ABC Defendants in *Tilton v. Capital Cities, et al.*, had the original carbon copies of Exhibits 68 and 69 in their possession in Tulsa, Oklahoma.

15. The original carbon copies of Exhibits 68 and 69 are original carbon copies of telephone log books from the law office of Joyce & Pollard.

16. The attorneys representing the ABC Defendants in *Tilton v. Capital Cities, et al.*, have no lawful right to be in possession of the original carbon copies of Exhibits 68 and 69.

17. The original carbon copies of Exhibits 68 and 69 were stolen from Joyce & Pollard.

18. The RICO Defendants also sought to enlist the aid of criminal investigations of Reverend Tilton and the Church by local, state and federal law enforcement authorities.

19. Through the prompting of the RICO Defendants, following the initial *PrimeTime Live* broadcast, investigations were launched by:

a. the Dallas County District Attorney's Office;

b. the Dallas County Central Appraisal District;

c. the Texas Attorney General's Office;

d. the U.S. Postal Service;

e. the Federal Bureau of Investigation;

f. the Internal Revenue Service; and

g. the Office of Congressman Pickle.

20. Despite these investigations, not one criminal charge or complaint has been filed against the Church, Reverend Tilton, or any of the Church's employees relating to the matters contained in the three *PrimeTime Live* broadcasts.

21. During the events complained of in connection with the RICO claims, the RICO Defendants acted in active concert and participation with each other.

a. In sworn deposition testimony given by Anthony in *Harrision v. Tilton, et al.*, Cause No. 92-5480-B, in the 44th Judicial District Court, Dallas County, Texas, Anthony testified (*see* Exhibit 50, pp. 122-30):

Q: And did you work in cooperation with ABC—

A: Yes.

Q: —after that initial meeting?

A: Yes.

Q: Who did you first meet with in ABC?

A: A field producer named Kelly Sutherland.

Q: Are you still working with ABC with regard to any investigation regarding Reverend Tilton or the church?

A: I'm in contact. I wouldn't say working with them. . . .

Q: Have you been in fairly constant or routine contact with them ever since May of 1991 through the present time?

A: Yes.

Anthony also testified:

The decision to go and where to go and when to go was—the decision to go, to do the trash, was ABC's. Then the coordination of when that would

take place was between myself and ABC. *Id.*, p. 124.

* * * * * *

Q: With regard to your covert or undercover operations involved in this matter involving Reverend Tilton, was this trash sweep organized by you or by someone else?

A: I believe we discussed that yesterday, but it was—the idea for it was ABC.

Q: Okay. The master mind behind it was ABC—

A: Yes.

Q: —and you were simply an instrument of this; is that what you're saying?

A: Yes. *Id.* at 130.

c. Anthony also testified that he and the other individual Trinity Defendants acted at the direction of Gordon and ABC, were in constant interstate wire communication with them during some of the alleged "trash sweeps," and that ABC made the decision to "target" Reverend Tilton.

d. The expenses of the Trinity Defendants incurred in connection with the "investigation" for the broadcasts were funded by Gordon and ABC.

e. Exhibit 16 is an authentic copy of one of Gordon's travel vouchers.

f. Exhibit 20 is an authentic copy of one of Gordon's travel vouchers.

g. Exhibit 23 is an authentic copy of a memorandum from Gordon to Cooke, directing him to "meet up with Ole [Anthony]—reshoot trash piled on one desk with prayer cloth and mailbacks on top—make look voluminus [*sic*]."

h. Exhibit 27 is an authentic copy of a memorandum from Gordon to Levy.

i. Exhibit 36 is an authentic copy of one of Gordon's travel vouchers.

j. Exhibit 37 is an authentic copy of one of Gordon's travel vouchers.

k. Exhibit 38 is an authentic copy of a check from Gordon to Anthony.

l. Exhibit 39 is an authentic copy of one of Gordon's travel vouchers.

m. In the broadcasts, Sawyer consistently says "*we* found" the items in the trash, and on two of the "trash sweeps" the only people allegedly present were Anthony, Guetzlaff, and Holloway.

n. Sawyer also gave on-the-air "investigative" credit to Anthony, Gordon, and Sutherland for their participation in the "investigation."

G. Predicate Acts:

1. Wire Fraud, 18 U.S.C. § 1343 (unknown date, call from ABC to Wheymeyer):

a. On an unknown date, believed to have been in or around May, 1991, a presently unknown employee, agent, or other representative of the ABC Defendants placed an interstate telephone call to Peggy Wheymeyer in Dallas, Texas.

b. Exhibit 6 is an authentic copy of the memorandum made by the ABC employee, agent, or representative concerning the call.

2. Wire Fraud, 18 U.S.C. § 1343 (May, 1991, call from Sutherland to Anthony):

In or about May, 1991, Sutherland placed an interstate telephone call to Anthony in Dallas, Texas.

3. Mail Fraud, 18 U.S.C. § 134I (05/28/91 Anthony letter to Sutherland):

On or about May 28, 1991, in or around Dallas, Texas, Anthony deposited Exhibit 4 with the U.S. Postal Service, addressed to Sutherland.

4. Mail Fraud, 18 U.S.C. § 134I (05/28/91 Anthony letter to Sutherland):

On or about May 28, 1991, in New York, New York, Sutherland, or someone acting on her behalf, took or received Exhibit 4 from the U.S. Postal Service.

5. Mail Fraud, 18 U.S.C. § 1341 (causing direct mailings, ABC):

a. At divers times between in or about May and November 21, 1991, numerous presently unknown employees or agents of the Corporate ABC Defendants, sometimes using false pretenses, such as fictitious names or pseudonyms (including a cat "Walker Railey Bailey"), caused numerous items to be deposited in the U.S. mails, including, without limitation, the items depicted in Exhibit 71.

b. Specifically, between May and November 21, 1991, numerous employees or agents of the Corporate ABC Defendants caused their names to be placed on the Church's mailing list.

c. In some instances, false names or pseudonyms were used.

d. In all instances, none of the employees or agents sincerely desired to become members of the Church.

e. As a direct, foreseeable result of causing their names to be placed on the mailing list, on numerous occasions between May and November 21, 1991, items

were mailed by the Church to these employees or agents of the Corporate ABC Defendants.

f. Many of these mailed items were then videotaped in Exhibit 71.

6. Mail Fraud, 18 U.S.C. § 1341 (taking direct mailings from the mail, ABC):

a. At divers times between in or about May and November 21, 1991, numerous presently unknown employees or agents of the Corporate ABC Defendants, sometimes using false pretenses, such as fictitious names or pseudonyms (including a cat "Walker Railey Bailey"), caused numerous items to be deposited in the U.S. mails, including, without limitation, the items depicted in Exhibit 71.

b. Specifically, between May and November 21, 1991, numerous employees or agents of the Corporate ABC Defendants caused their names to be placed on the Church's mailing list.

c. In some instances, false names or pseudonyms were used.

d. In all instances, none of the employees or agents sincerely desired to become members of the Church.

e. As a direct, foreseeable result of causing their names to be placed on the mailing list, on numerous occasions between May and November 21, 1991, items were mailed by the Church to these employees or agents of the Corporate ABC Defendants.

f. On or about the dates of each mailing, each employee or agent of the Corporate ABC Defendants, or someone acting on their behalf, took or received each mailing from the U.S. Postal Service.

g. Many of these mailed items were then videotaped in Exhibit 71.

7. Mail Fraud, 18 U.S.C. § 1341 (causing direct mailings, Trinity Foundation):

a. At divers times between in or about May and November 21, 1991, numerous presently unknown employees or agents of the Trinity Foundation, sometimes using false pretenses, such as fictitious names or pseudonyms (including a cat "Walker Railey Bailey"), caused numerous items to be deposited in the U.S. mails, including, without limitation, the items depicted in Exhibit 71.

b. Specifically, between May and November 21, 1991, numerous employees or agents of the Trinity Foundation caused their names to be placed on the Church's mailing list.

c. In some instances, false names or pseudonyms were used.

d. In all instances, none of the employees or agents sincerely desired to become members of the Church.

e. As a direct, foreseeable result of causing their names to be placed on the mailing list, on numerous occasions between May and November 21, 1991, items were mailed by the Church to these employees or agents of the Trinity Foundation.

f. Many of these mailed items were then videotaped in Exhibit 71.

8. Mail Fraud, 18 U.S.C. § 1341 (taking direct mailings from the mail, Trinity Foundation):

a. At divers times between in or about May and November 21, 1991, numerous presently unknown employees or agents of the Trinity Foundation, sometimes using false pretenses, such as fictitious names or pseudonyms (including a cat "Walker Railey Bailey"), caused numerous items to be deposited in the U.S. mails, in-

cluding, without limitation, the items depicted in Exhibit 71.

b. Specifically, between May and November 21, 1991, numerous employees or agents of the Trinity Foundation caused their names to be placed on the Church's mailing list.

c. In some instances, false names or pseudonyms were used.

d. In all instances, none of the employees or agents sincerely desired to become members of the Church.

e. As a direct, foreseeable result of causing their names to be placed on the mailing list, on numerous occasions between May and November 21, 1991, items were mailed by the Church to these employees or agents of the Trinity Foundation.

f. On or about the dates of each mailing, each employee or agent of the Trinity Foundation, or someone acting on their behalf, took or received each mailing from the U.S. Postal Service.

g. Many of these mailed items were then videotaped in Exhibit 71.

9. Bank Fraud, 18 U.S.C. § 1344:

a. During the events complained of in connection with the RICO claims, the Bank was a federally insured institution.

b. On divers times from at least June 10, 1991, through on or about September 14, 1991, in Tulsa, Oklahoma, acting on behalf of one or more of the other RICO Defendants, one or more Bank Does executed, or attempted to execute, a scheme or artifice to defraud the Bank of the honest and loyal services of one or more of its agents or employees within the meaning of 18 U.S.C. § 1346, by stealing various items, property of the Church

moving in interstate commerce and that were in the possession custody and control of the Bank, including, without limitation, the Newell, Bray, McDuffie, Casey, Leon, Lowry, and Perez mailings.

10. Mail Fraud, 18 U.S.C. § 1341 (taking the Casey letter from the mail):

On or about June 10, 1991, in Tulsa, Oklahoma, acting on behalf of one or more of the other RICO Defendants, one or more Bank Does took from the mails mail matter addressed to the Church from Wilfred Casey, including a prayer request and a $50 contribution intended for the Church.

11. Mail Fraud, 18 U.S.C. § 1341 (taking the Bray letter from the mail):

On or about June 12, 1991, in Tulsa, Oklahoma, acting on behalf of one or more of the other RICO Defendants, one or more Bank Does took from the mails mail matter addressed to the Church from David Bray, including a prayer request and a $100 contribution intended for the Church.

12. Mail Fraud, 18 U.S.C. § 1341 (mailing the Night Talk proposal):

On or about July 10, 1991, Guetzlaff placed Exhibit 7 in the United States Postal System, addressed to Channel 33, Fox Television.

13. Mail Fraud, 18 U.S.C. § 1341 (taking the McDuffie letter from the mail):

On or about July 12, 1991, in Tulsa, Oklahoma, acting on behalf of one or more of the other RICO Defendants, one or more Bank Does took from the mails mail matter addressed to the Church from Matilda McDuffie, including a prayer request and a $100 contribution intended for the Church.

14. Mail Fraud, 18 U.S.C. § 1341 (taking the Lowry letter from the mail):

Sometime between August 28, 1991, and September 14, 1991, either in Dallas, Texas, or in Tulsa, Oklahoma, acting on behalf of one or more of the other RICO Defendants, one or more Church Does or Bank Does took from the mails mail matter addressed to the Church from Barbara Lowry, including a letter and photographs intended for the Church.

15. Mail Fraud, 18 U.S.C. § 1341 (taking the Leon letter from the mail):

Sometime between August 27, 1991, and September 14, 1991, either in Dallas, Texas, or in Tulsa, Oklahoma, acting on behalf of one or more of the other RICO Defendants, one or more Church Does or Bank Does took from the mails mail matter addressed to the Church from Irma F. Leon, including a letter intended for the Church.

16. Mail Fraud, 18 U.S.C. § 1341 (taking the Perez letter from the mail):

Sometime between August, 1991, and September 14, 1991, either in Dallas, Texas, or in Tulsa, Oklahoma, acting on behalf of one or more of the other RICO Defendants, one or more Church Does or Bank Does took from the mails mail matter addressed to the Church from Maria A. Perez, including a letter intended for the Church.

17. Wire Fraud, 18 U.S.C. § 1343 (relating to "trash sweep A"):

a. At divers times between September 9 and September 12, 1991, Anthony and Gordon caused numerous transmissions of sounds and signals by means of wire in interstate commerce by engaging in numerous telephone and mobile telephone calls between Tulsa, Oklahoma (where Anthony claims he was located), and other states or district, presumably New York or Washington, D.C.

b. In simple terms, between September 9 and September 21, 1991, Anthony and Gordon engaged in numerous interstate telephone calls between Oklahoma and either New York or Washington, D.C.

18. Wire Fraud, 18 U.S.C. § 1343 (relating to Cooke's scheme to obtain employment with the Church under false pretenses; the Minnesota call):

a. On or about August 20, 1991, Cooke applied for employment with the Church.

b. Cooke did so in active concert and participation with Gordon, who accompanied Cooke to the Church.

c. In applying for employment with the Church, Cooke completed the *Word of Faith World Outreach Center Application for Employment* ("*Application*") attached to Exhibit 26.

d. In applying for employment with the Church, Coke also provided representatives of the Church with the resume attached to Exhibit 26.

e. Cooke applied for employment with the Church in order to obtain wages from, and property and confidential and constitutionally protected information of, the Church.

f. In the *Application*, Cooke made the following statements or representations:

(1) his address was 3855 Lankershim Blvd, North Hollywood, California 91614;

(2) his telephone number was (214) 353-4439;

(3) his social security number was 527-08-1597;

(4) "I've recently had a child and would like to raise her somewhere other than Los Angeles."

(5) "I'm seeking full time employment at a good family oriented organization like Work of Faith."

(6) he was a Christian; and

(7) he was a member of Christian Faith Center church.

g. Each of the statements or representations in the preceding paragraph were false when made.

h. In his resume provided to representatives of the Church, Cooke listed his phone number as (214) 353-4439.

i. The phone number listed in the *Application* and resume was a number provided by the Trinity Foundation.

j. In applying for employment Cooke provided representatives of the Church with the following prior jobs as part of his employment history:

(1) 08/78-02/88 employed by KTLA, 172 E. 4th Street, St. Paul, Minnesota 55101, with point of contact being "Charlotte" at (612) 222-1717;

(2) 03/86-12/88 employed by Preview Media, 1160 Battery Street, San Francisco, California 94111, with point of contact being Natalia Torres, (415) 387-2494; and

(3) 10/89-05/91 employed by Screen Enterprises, 9802 Bay Meadows, Jacksonville, Florida, with point of contact being "Kelly Barnett."

k. Each of the references contained in the preceding paragraph was false.

l. On or about September 20, 1991, representatives of the Church placed a long distance, interstate telephone call between Texas and Minnesota to "Charlotte Mardell" to obtain a reference for Cooke in

connection with his application for employment with the Church.

m. The interstate phone call was a direct, foreseeable result of Cooke's application for employment with the Church.

n. Cooke sought employment with the Church under false pretenses.

19. Wire Fraud, 18 U.S.C. § 1343 (relating to Cooke's scheme to obtain employment with the Church under false pretenses; the California call):

a. On or about August 20, 1991, Cooke applied for employment with the Church.

b. Cooke did so in active concert and participation with Gordon, who accompanied Cooke to the Church.

c. In applying for employment with the Church, Cooke completed the *Word of Faith World Outreach Center Application for Employment* ("*Application*") attached to Exhibit 26.

d. In applying for employment with the Church, Coke also provided representatives of the Church with the resume attached to Exhibit 26.

e. Cooke applied for employment with the Church in order to obtain wages from, and property and confidential and constitutionally protected information of, the Church.

f. In the *Application*, Cooke made the following statements or representations:

(1) his address was 3855 Lankershim Blvd, North Hollywood, California 91614;

(2) his telephone number was (214) 353-4439;

(3) his social security number was 527-08-1597;

(4) "I've recently had a child and would like to raise her somewhere other than Los Angeles."

(5) "I'm seeking full time employment at a good family oriented organization like Work of Faith."

(6) he was a Christian; and

(7) he was a member of Christian Faith Center church.

g. Each of the statements or representations in the preceding paragraph were false when made.

h. In his resume provided to representatives of the Church, Cooke listed his phone number as (214) 353-4439.

i. The phone number listed in the *Application* and resume was a number provided by the Trinity Foundation.

j. In applying for employment Cooke provided representatives of the Church with the following prior jobs as part of his employment history:

(1) 08/78-02/88 employed by KTLA, 172 E. 4th Street, St. Paul, Minnesota 55101, with point of contact being "Charlotte" at (612) 222-1717;

(2) 03/86-12/88 employed by Preview Media, 1160 Battery Street, San Francisco, California 94111, with point of contact being Natalia Torres, (415) 387-2494; and

(3) 10/89-05/91 employed by Screen Enterprises, 9802 Bay Meadows, Jacksonville, Florida, with point of contact being "Kelly Barnett."

k. Each of the references contained in the preceding paragraph was false.

l. On or about September 20, 1991, representatives of the Church placed a long distance, interstate

telephone call between Texas and California to "Mike Stanford" to obtain a reference for Cooke in connection with his application for employment with the Church.

m. The interstate phone call was a direct, foreseeable result of Cooke's application for employment with the Church.

n. Cooke sought employment with the Church under false pretenses.

20. Wire Fraud, 18 U.S.C. § 1343 (relating to Cooke's scheme to obtain employment with the Church under false pretenses; the Florida call):

a. On or about August 20, 1991, Cooke applied for employment with the Church.

b. Cooke did so in active concert and participation with Gordon, who accompanied Cooke to the Church.

c. In applying for employment with the Church, Cooke completed the *Word of Faith World Outreach Center Application for Employment* ("*Application*") attached to Exhibit 26.

d. In applying for employment with the Church, Coke also provided representatives of the Church with the resume attached to Exhibit 26.

e. Cooke applied for employment with the Church in order to obtain wages from, and property and confidential and constitutionally protected information of, the Church.

f. In the *Application*, Cooke made the following statements or representations:

(1) his address was 3855 Lankershim Blvd, North Hollywood, California 91614;

(2) his telephone number was (214) 353-4439;

(3) his social security number was 527-08-1597;

(4) "I've recently had a child and would like to raise her somewhere other than Los Angeles."

(5) "I'm seeking full time employment at a good family oriented organization like Work of Faith."

(6) he was a Christian; and

(7) he was a member of Christian Faith Center church.

g. Each of the statements or representations in the preceding paragraph were false when made.

h. In his resume provided to representatives of the Church, Cooke listed his phone number as (214) 353-4439.

i. he phone number listed in the *Application* and resume was a number provided by the Trinity Foundation.

j. In applying for employment Cooke provided representatives of the Church with the following prior jobs as part of his employment history:

(1) 08/78-02/88 employed by KTLA, 172 E. 4th Street, St. Paul, Minnesota 55101, with point of contact being "Charlotte" at (612) 222-1717;

(2) 03/86-12/88 employed by Preview Media, 1160 Battery Street, San Francisco, California 94111, with point of contact being Natalia Torres, (415) 387-2494; and

(3) 10/89-05/91 employed by Screen Enterprises, 9802 Bay Meadows, Jacksonville, Florida, with point of contact being "Kelly Barnett."

k. Each of the references contained in the preceding paragraph was false.

l. On or about September 20, 1991, representatives of the Church placed a long distance, interstate telephone call between Texas and Florida to "Kelly Barnett" to obtain a reference for Cooke in connection with his application for employment with the Church.

m. The interstate phone call was a direct, foreseeable result of Cooke's application for employment with the Church.

n. Cooke sought employment with the Church under false pretenses.

21. Interstate Transportation of Stolen Goods, 18 U.S.C. § 2314 (the computer disks):

a. On or about October 5, 1991, Gordon, or someone acting on her behalf, transported one or more computer disks from Oklahoma to either Washington, D.C., or New York, New York.

b. The disk(s) belonged to IDM.

c. Alternatively, the disk(s) belonged to Response Media.

d. Alternatively, the disk(s) belonged to the Bank.

e. Alternatively, the disk(s) belonged to the Church.

f. The data on the disk(s) belonged to IDM.

g. Alternatively, the data on the disk(s) belonged to Response Media.

h. Alternatively, the data on the disk(s) belonged to the Bank.

i. Alternatively, the data on the disk(s) belonged to the Church.

j. Gordon had no lawful right to obtain or possess the disk(s).

k. At the time the disk(s) was (were) transported between Oklahoma and either Washington, D.C., or New

York, New York, the disks had been stolen from either IDM, Response Media, the Bank, or the Church.

l. The disk(s) had been stolen by one of the RICO Defendants.

m. At the time the disk(s) was (were) transported between Oklahoma and either Washington, D.C., or New York, New York, Gordon, or the person acting on her behalf, knew the disk(s) had been stolen.

n. The disk(s) and the data thereon were of a value in excess of $5,000.

o. On or about October 5, 1991, at Gordon's request, the disk(s) were decoded by ImageTech, Inc.

p. Exhibit 18 contains an authentic copy of an invoice from ImageTech, Inc., to Robbie Gordon in the amount of $450, with addresses redacted.

q. The ImageTech, Inc., invoice is a business record of ImageTech, Inc., within the meaning of *Fed. R. Evid.* 803(6).

r. Exhibit 18 also contains an authentic copy of a personal check of Gordon, with home address redacted, to ImageTech, Inc., in the amount of $450.

s. Exhibit 35 is an authentic copy of an expense report of Gordon, seeking reimbursement of the $450 paid by Gordon to ImageTech, Inc.

22. Receipt of Property Stolen from Interstate Commerce, 18 U.S.C. § 2315 (the computer disks):

a. On or about October 5, 1991, Gordon, or someone acting on her behalf, received one or more computer disks that had been transported from Oklahoma to either Washington, D.C., or New York, New York.

b. The disk(s) belonged to IDM.

c. Alternatively, the disk(s) belonged to Response Media.

d. Alternatively, the disk(s) belonged to the Bank.

e. Alternatively, the disk(s) belonged to the Church.

f. The data on the disk(s) belonged to IDM.

g. Alternatively, the data on the disk(s) belonged to Response Media.

h. Alternatively, the data on the disk(s) belonged to the Bank.

i. Alternatively, the data on the disk(s) belonged to the Church.

j. Gordon had no lawful right to obtain or possess the disk(s).

k. At the time the disk(s) was (were) transported between Oklahoma and either Washington, D.C., or New York, New York, the disks had been stolen from either IDM, Response Media, the Bank, or the Church.

l. The disk(s) had been stolen by one of the RICO Defendants.

m. At the time Gordon or the person acting on her behalf received the disk(s), Gordon, knew the disk(s) had been stolen.

n. At the time Gordon or the person acting on her behalf received the disk(s), Gordon, knew the disk(s) had been transported from Oklahoma to either Washington, D.C., or New York, New York.

o. The disk(s) and the data thereon were of a value in excess of $5,000.

p. On or about October 5, 1991, at Gordon's request, the disk(s) were decoded by ImageTech, Inc.

q. Exhibit 18 contains an authentic copy of an invoice from ImageTech, Inc., to Robbie Gordon in the amount of $450, with addresses redacted.

r. The ImageTech, Inc., invoice is a business record of ImageTech, Inc., within the meaning of *Fed. R. Evid.* 803(6).

s. Exhibit 18 also contains an authentic copy of a personal check of Gordon, with home address redacted, to ImageTech, Inc., in the amount of $450.

t. Exhibit 35 is an authentic copy of an expense report of Gordon, seeking reimbursement of the $450 paid by Gordon to ImageTech, Inc.

23. Mail Fraud, 18 U.S.C. § 1341 (the ImageTech invoice):

a. On or about October 5, 1991, at Gordon's request, the disk(s) were decoded by ImageTech, Inc.

b. Exhibit 18 contains an authentic copy of an invoice from ImageTech, Inc., to Robbie Gordon in the amount of $450, with addresses redacted.

c. The ImageTech, Inc., invoice is a business record of ImageTech, Inc., within the meaning of *Fed. R. Evid.* 803(6).

d. On or about October 5, 1991, the invoice from ImageTech, Inc., was placed in the U.S. Postal Service.

e. The use of the mails by ImageTech, Inc., was a reasonably foreseeable result of Gordon's actions in having ImageTech, Inc., decode the disk(s).

24. Mail Fraud, 18 U.S.C. § 1341 (Gordon's check to ImageTech):

a. Exhibit 18 contains an authentic copy of a personal check of Gordon, with home address redacted, to ImageTech, Inc., in the amount of $450.

b. On or about October 19, 1991, Gordon caused her personal check to ImageTech, Inc., to be placed in the U.S. Postal Service.

25. Multiple Wire Frauds, 18 U.S.C. § 1343 (the Success in Life Infiltration):

a. On or about October 26, 1991, in Dallas, Texas, Ellen Levy, and two other individuals, believed to be Derell Blain, and Barbara Wilson twice gained access to the Church's *Success In Life* phone answering room.

b. The purpose for Levy and her two accomplices going to *Success In Life* was to obtain property and confidential and constitutionally protected information from the Church.

c. To gain access to *Success In Life* Levy and her accomplices provided false and misleading information to representatives of the Church, including false information concerning her true identity and address.

d. Anthony arranged for the two accomplices to accompany Levy.

e. Anthony, Levy, and Gordon worked in active concert and participation with each other to arrange the infiltration.

f. Anthony provided Levy with a fraudulent local address and telephone number to use as a in order to gain access to *Success In Life.*

g. At all relevant times in relation to the infiltrations of *Success In Life*, the two accomplices who accompanied Levy were employed by or associated with the Trinity Foundation within the meaning of 18 U.S.C. § 1962(c) and (d).

h. Exhibits 28 and 29 are authentic copies of videotapes made by Levy during the October 26, 1991, infiltration of *Success In Life.*

i. During the infiltrations of *Success In Life* Levy and her two accomplices participated in numerous interstate and, in some cases, foreign (Canada) telephone conversations with persons calling *Success in Life*.

j. These calls included, but were not limited to:

(1) A phone conversation between Ellen Levy and an individual named Besmukh (?) from Montreal, Canada;

(2) A phone conversation between Ellen Levy and an individual named August Johnson from Baton Rouge, Louisiana; and

(3) A phone conversation between Ellen Levy and an individual named Melva Baker from Los Angeles, California.

k. During their infiltration of *Success In Life* Levy and the two accomplices stole prayer requests or other property of the Church.

l. During their infiltration of *Success In Life* Levy and the two accomplices recorded portions of phone conversations being engaged in by other *Success In Life* volunteers, none of whom had consented to the recording.

26. Wire Fraud, 18 U.S.C. § 1343 (the Lodge fax to Gordon):

On or about November 19, 1991, Gordon caused Bill Lodge to send her an interstate fax transmission.

27. Wire Fraud, 18 U.S.C. § 1343 (the Brewton fax to Gordon):

On or about November 19, 1991, Gordon caused Pete Brewton to send her an interstate fax transmission.

28. Wire Fraud, 18 U.S.C. § 1343 (the Sarah W fax to Gordon):

On or about November 19, 1991, Gordon caused Sarah W to send her an interstate fax transmission.

Exhibit 30 is an authentic copy of the fax.

29. Wire Fraud, 18 U.S.C. § 1343 (the November 21, 1991 broadcast):

a. On November 21, 1991, the ABC Defendants broadcast *PrimeTime Live* by means of interstate television transmission.

b. In the transmission, the following statements or representations, with accompanying visual images, were made by Sawyer, in active concert and participation with Gordon, Sutherland, Cooke, Levy, Anthony and others.

(1) False Statement No. 1:

(a) Sawyer stated: "***He*** takes in millions of tax-free dollars."

(b) This statement was false or misleading because:

(i) the Church was at the time organized as a non-profit corporation; and

(ii) donations were made to the Church, not to Reverend Tilton personally.

(2) False Statement No. 2:

(a) Sawyer stated: "You'll see how the business man deposits followers' money directly into the bank, ***but has a shocking place for their prayers and dreams.***"

(b) This statement was false or misleading because it is predicated on the false repre-

sentation that the prayer requests and other mail items depicted in the broadcast were found in the trash as IDM or the Bank.

*(3) **False Statement No. 3:***

(a) Sawyer stated: "The following is the result of a four-month ***investigation***."

(b) This statement was false or misleading because there was no objective investigation of the Church or its ministries. Rather, there was a concerted plan to put the Church out of business through a pattern of racketeering activity.

*(4) **False Statement No. 4:***

(a) Sawyer stated: "[W]e are in no way questioning faith or religious belief of any kind."

(b) This statement was false or misleading precisely because both directly, and by necessary implication, the broadcast attacked the sincerity of Reverend Tilton and followers of the Church.

*(5) **False Statement No. 5:***

(a) Sawyer stated: "He also tells followers he'll pray for their miracles, ***so*** they should send in money."

(b) This statement was false or misleading because neither Reverend Tilton nor the Church has ever told anyone to send money to the Church because Reverend Tilton would pray, or has prayed, over their prayer requests.

(6) False Statement No. 6:

(a) Sawyer stated: "We asked him [Jim Moore] how to start a big money ministry like Tilton's."

(b) This statement was false or misleading because:

(i) Neither Anthony, Gordon, or Cooke ever asked Moore this question;

(ii) Additionally, instead of a "big money ministry," the trio of infiltrators sought help in promoting Anthony's and the Trinity Foundation's plans for a nationally syndicated radio and television show, *Night-Talk*.

(7) False Statement No. 7:

(a) The broadcast implied that "holy water" sent by the Church to its followers came from Taiwan, not the River Jordan.

(b) This implication was false or misleading because:

(i) Neither the Holy Water, nor any other item included in mailings from the Church, came from Taiwan, and Gordon, Cooke, and Anthony clearly knew it.

(ii) When leaving Response Media on August 26, 1991, Gordon and Anthony engaged in the following conversation:

Gordon: I really wanted to get him to say that ***stuff*** is not from the River Jordan, but I think that's (inaudible).

Anthony: Yeah, I know, I know. I did too, but I thought it would become too obvious. . . .

(8) False Statement No. 8:

(a) Sawyer stated: "Moore said some of the items come from that holy place, Taiwan."

(b) This statement was false or misleading because Moore never stated that any of the Church's items come from Taiwan.

(9) False Statement No. 9:

(a) Sawyer stated: "The letters accompanying the items ***are written by ghost writers to pressure followers*** to write back and make donations, too."

(b) This statement was false or misleading because:

(i) Response Media is used by the Church strictly as a printer.; and

(ii) The Church creates its own mailings.

(10) False Statement No. 10:

(a) Sawyer stated: "And when the letters arrive, they're processed so the company knows which fund-raising appeals you can use to squeeze followers for the most donations."

(b) This statement was false or misleading because:

(i) None of the Church's mail is processed by Response Media;

(ii) Response Media is strictly a printing company;

(iii) The Bank and IDM process the mail so that the Church can maintain accurate financial records for budgetary, tax, and auditing purposes, not only for itself, but for its followers.

(11) False Statement No. 11:

(a) Sawyer stated: ***"But we tracked down every charitable contribution of Tilton's we could find and we calculate he spends more in a year on billboards around Dallas than he does on all of these missions combined."***

(b) This statement was false or misleading because:

(i) The Church supported numerous other missions and outreach ministries than those depicted in the broadcast;

(ii) The statement implicitly attacked the sincerity of the Church's theology; and

(iii) The Church spent far more on outreach ministries than viewers were lead to believe.

(12) False Statement No. 12:

(a) The broadcast represented that the Church does not financially support orphanages in Haiti.

(b) This representation was false.

(13) False Statement No. 13:

(a) Sawyer stated: "And Tilton's marketing director made it clear, when it comes to money for missions, Tilton is very smart. He's careful to say what donation goes where so he can avoid, again, how Jim and Tammy got caught."

(b) This statement was false or misleading because:

(i) Moore is not "marketing director" for the Church;

(ii) Response Media is used solely as a printer;

(iii) The statement is grossly misleading to a listener of ordinary intelligence because it conveys, and was intended to convey, an impression of dishonesty when the Individual ABC Defendants knew there "was no fraud on this guy;"

(iv) Immediately following the statement attributed to Moore, Moore went on to state:

Bob is cleaner than anyone out there. He comes against a lot of heat, but he's the cleanest one I've worked with. I mean, everything down to the wire. He takes no perks for anything. He--a lot of people--the IRS has come down on a lot of people for different type of allowances that they've made. Oral [Roberts] for instance got in trouble for like plane usage. If it's not business, then you've got to deduct it personally. You can get in trouble two ways, one personally, and you can lose your non-profit status.

(v) Moore also specifically told Anthony, Gordon, and Cooke that he and his company would never work with a client that was not above board.

(c) When leaving Response Media on August 26, 1991, Gordon told Cooke and Anthony she wasn't sure the trio had gotten enough on tape to "get" Reverend Tilton, but

she would have to check the wording captured on the tape before deciding.

(14) False Statement No. 14:

(a) Sawyer stated: "But he never tells followers how he and his friends talked about running preacher scams and cashing in."

(b) The statement is, simply, false and was intentionally made to create and convey an imputation of fraud and/or criminality when ABC's own internal documents demonstrated full knowledge that there was "NO FRAUD ON THIS GUY - CAN HAVE FUN WITH HIM THOUGH".

(c) Sawyer used the words "preacher scams and cashing in" despite having been advised, through Gordon, that ABC's lawyers had advised against doing so on grounds that to do so would be defamatory.

(15) False Statement No. 15:

(a) Sawyer stated: "That was 1974, when Tilton started out. And by 1981, he had hit the big time. How: PrimeTime has learned that for several years, ***Tilton courted a man news accounts have tied to organized crime and drug smuggling***, Herman Beebe, a financier whose banks ***gave Tilton a $1.3 million loan, though Tilton claims he never met the man***. And after Tilton got the money, he got a new image, too—a permanent wave for his hair, plastic surgery and, ***like his good buddy Jim Bakker***, a talent for ***tears on demand***."

(b) This statement was false or misleading because:

(i) First, the reference to Beebe, organized crime and drug smuggling, following as it does by less than 30 seconds, Sawyer's statement, "Tilton . . . ***admits*** he was a drug user, but ***says*** he was saved when some people came to his house and explained Christ," was intended to convey a false and misleading impression of criminality where none existed;

(ii) Second, the references to the loan are likewise intended to convey a false and misleading message of fraud where none exists; and

(iii) Finally, the reference to "***good buddy***" Bakker, who had, by then, been convicted and incarcerated for fraud, was likewise so intended and was false

(16) False Statement No. 16:

(a) The entire portion of the program involving the discussions with Hardy and Montcalm conveyed a false and misleading impression concerning the sincerity of the Church's ministry and was intentionally so because the ABC Defendants knew from their own surreptitious infiltration of *Success In Life* on at least two occasions that:

(i) The persons initially answering the phones were not, nor were represented to be, "prayer ministers;"

(ii) Whenever a caller wanted to pray over the phone, the answerer would connect the caller with a prayer minister, who ***was*** specially trained;

(iii) No donations were solicited over the phone;

(iv) Ellen Levy herself acknowledged—on tape—while infiltrating *Success In Life* on or about October 26, 1991: "Prayers don't cost money. We're taking prayer requests for Pastor Bob while he is in Israel."

(v) Persons answering the phones were not pressured to quickly end any call (except one from an obscene caller); and

(vi) Callers were expressly informed that Reverend Tilton was at the time in Israel and their prayer requests would be faxed to him.

(17) False Statement No. 17:

(a) Sawyer stated: "Tilton has organized his ministry as a sole proprietorship . . . [and has] $60 million in assets available to Tilton. And those are the ones he puts on the list."

(b) This statement was false or misleading because:

(i) WOF, Inc., was a tax exempt non-profit corporation formed under and in accordance with Texas law;

(ii) Tilton did not have personal access to the assets of the Church;

(iii) The latter statement falsely and misleadingly insinuates that Reverend Tilton had secreted away millions more; and

(iv) Indeed, Anthony later called a press conference in which he falsely ac-

cused Reverend Tilton of secreting substantial sums of cash in offshore accounts.

(18) False Statement No. 18:

(a) Sawyer stated: *"And those items that people have prayed over and sent in, believing Robert Tilton would take them and pray over them too? If some make it to Tilton, there are thousands that didn't. We found them in the garbage at the bank [and] in the marketing research center. The 'angels of God,' the prayer cords, the arrows—this person wanted his aimed at getting a real dad—the tracing where Tilton said he'd place his hand, ripped up by the bank. We found heart-breaking appeals from followers and letters like this one. It came with a $7,000 pledge. The money probably made it to Tilton. The prayers went into the trash."*

(b) This statement was false or misleading because:

(i) First, none of the material depicted was found in the trash;

(ii) The "trash" depicted was all:

- Church mailings received directly by ABC operatives who had fraudulently placed their names on the Church's mailing lists, and which had never been mailed back to the Church;

- Items obtained from the Church by the RICO Defendants while surreptitiously attending worship services at the Church, and

which also were never mailed back in to the Church;

• "Regular mail" and other items stolen by the RICO Defendants from the bank and data processing company which initially processed the Church's mail; and

• "White mail" stolen from the either a bank or the Church.

(iii) Second, the program visually represented the dumpster outside the Bank's main office as the location of some of the "finds," when, in fact, the main Bank office did not handle the Church's mail, a branch office did.

(iv) Third, the ABC Defendants knew full well that the Barbara Lowry letter did not contain any money, merely a pledge of $7,000.

(v) Fourth, much of the material depicted and represented as having been found in the trash consisted of "white mail," which is unsolicited mail concerning which neither Reverend Tilton nor the Church has ever made any representations concerning its handling or disposition.

(19) False Statement No. 19:

(a) Sawyer also stated: "[Tilton] heads the fastest-growing ministry on television today. . . . He parlays all of it into a high-tech church in Dallas and more air time than almost any other televangelist. . . . Tilton takes in so much money, he makes other TV ministers look like amateurs."

(b) The statement was false or misleading because by making the segment on Reverend Tilton and the Church the climax of a show that first featured two exposés concerning other television ministers the statement intentionally conveyed a false impression of fraudulent conduct and an association between Reverend Tilton, the Church and the other two ministers where none existed. Indeed, later in the broadcast, without factual support, Sawyer expressly tried to connect Tilton with one of the two earlier segments

c. Each of the false and misleading statements specified above were maliciously made.

d. Exhibit 32 is an authentic copy of the November 21, 1991, *PrimeTime Live* broadcast.

30. Wire Fraud, 18 U.S.C. § 1343 (the November 28, 1991 broadcast):

a. On November 28, 1991, the ABC Defendants broadcast *PrimeTime Live* by means of interstate television transmission.

b. In the transmission, the following statements or representations, with accompanying visual images, were made by Sawyer, in active concert and participation with Gordon, Sutherland, Cooke, Levy, Anthony and others.

(1) False Statement No. 1:

(a) Sawyer stated: "We had shown you how *prayer requests sent to Tilton, those heartbreaking appeals from people who are sick or in need, go instead straight to his bank so the bank can get the money.*"

(b) This statement was false or misleading to a viewer of ordinary intelligence be-

cause it conveys, and was intended to convey, an impression that the Church was only interested in whatever donations may be in the mail, not the prayer requests or other items mailed to the Church by followers. In fact, the mail is forwarded to the bank so that the Church can maintain accurate financial records for budgetary, tax, and auditing purposes, not only for itself, but for its followers.

*(2) **False Statement No. 2:***

(a) Sawyer stated: "But if Tilton says he prays over all those requests, what accounts ***for the thousands found in the garbage.***"

(b) This statement was false or misleading because:

(i) First, none of the material depicted was found in the trash;

(ii) The "trash" depicted was all:

- Church mailings received directly by ABC operatives who had fraudulently placed their names on the Church's mailing lists, and which had never been mailed back to the Church;

- Items obtained from the Church by the RICO Defendants while surreptitiously attending worship services at the Church, and which also were never mailed back in to the Church;

- "Regular mail" and other items stolen by the RICO Defendants from the bank and data processing

company which initially processed the Church's mail; and

- "White mail" stolen from the either a bank or the Church.

(iii) Second, the program visually represented the dumpster outside the Bank's main office as the location of some of the "finds," when, in fact, the main Bank office did not handle the Church's mail, a branch office did.

(iv) Third, the ABC Defendants knew full well that the Barbara Lowry letter did not contain any money, merely a pledge of $7,000.

(v) Fourth, much of the material depicted and represented as having been found in the trash consisted of "white mail," which is unsolicited mail concerning which neither Reverend Tilton nor the Church has ever made any representations concerning its handling or disposition.

(vi) The RICO Defendants did not find thousands of mail items in the garbage.

(3) False Statement No. 3:

(a) Sawyer stated: *"But we didn't plant the garbage. We didn't steal it. In fact, what we showed is what we found not just once, but on fourteen separate occasions in a one month period."*

(b) Each statement was false.

*(4) **False Statement No. 4:***

(a) Sawyer stated: "But we talked to some of the people ***whose letters were in the trash.***"

(b) This statement was false or misleading because none of the letters from the persons depicted in the broadcast had been found in the trash.

*(5) **False Statement No. 5:***

(a) Sawyer stated: "We showed you documents indicating his followers send in at least $80 million dollars a year, tax free. We told you about his $1.5 million in cash and cd's., ***his access to $14,000,000 in treasury bills, the $40 million in ministry real estate*** . . . ."

(b) This statement was false or misleading because the Church was organized as a Texas non-profit corporation, and Reverend Tilton did not have personal access to the Church's assets.

c. Each of the false and misleading statements specified above were maliciously made.

d. Exhibit 33 is an authentic copy of the November 28, 1991, *PrimeTime Live* broadcast.

31. Interstate Transportation of Stolen Goods, 18 U.S.C. § 2314 (Anthony's "excess baggage"):

a. On or about December 5, 1991, Gordon and Anthony, transported or caused to be transported in interstate commerce from Dallas, Texas, to Washington, D.C., and/or to New York, New York, six boxes of materials.

b. The contents of the boxes had been stolen.

c. At the time the boxes were transported from Texas, Gordon and Anthony knew the contents of the boxes had been stolen.

d. The value of the contents of the documents was in excess of $5,000.

32. Receipt of Property Stolen from Interstate Commerce, 18 U.S.C. § 2315 (Anthony's "excess baggage"):

a. On or about December 5, 1991, in or around either Washington, D.C., Gordon received, concealed, and/or disposed of six boxes of material from Anthony.

b. The boxes had been transported by Anthony from Dallas, Texas, to either Washington, D.C., or New York, New York.

c. The contents of the boxes had been stolen.

d. At the time Gordon received, concealed, and/or disposed of the boxes, Gordon knew the contents of the boxes had been stolen.

e. At the time Gordon received, concealed, and/or disposed of the boxes, Gordon knew the contents of the boxes had been transported from Texas.

f. The value of the contents of the documents was in excess of $5,000.

33. Interstate Transportation of Stolen Goods, 18 U.S.C. § 2314 (Anthony's "excess baggage"):

a. On or about December 7, 1991, Gordon and Anthony, transported or caused to be transported in interstate commerce from Washington, D.C., and/or to New York, New York, to Dallas, Texas, six boxes of materials.

b. The contents of the boxes had been stolen.

c. At the time the boxes were transported from Texas, Gordon and Anthony knew the contents of the boxes had been stolen.

d. The value of the contents of the documents was in excess of $5,000.

34. Wire Fraud, 18 U.S.C. § 1343 (the June, 1992, call from Sawyer to Cohn):

In or about June, 1992, Sawyer placed an interstate telephone call to Connie Conn.

35. Wire Fraud, 18 U.S.C. § 1343 (the July 9, 1992, broadcast):

a. On July 9, 1992, the ABC Defendants broadcast *PrimeTime Live* by means of interstate television transmission.

b. In the transmission, the following statements or representations, with accompanying visual images, were made by Sawyer, in active concert and participation with Gordon, Sutherland, Cooke, Levy, Anthony and others.

c. In the transmission, the same, or substantially the same, false, fraudulent and misleading statements or representations as had been made in the November 21 and November 28, 1991, broadcasts were knowingly, willfully, and maliciously made again by Sawyer, in active concert and participation with Gordon, Sutherland, Cooke, Levy and other presently unidentified ABC employees.

d. Additionally, the broadcast represented that during a crusade to India, Reverend Tilton had taken up a collection from the crowd—"the poorest of the poor"—when, in fact, as the ABC Defendants knew, or should have known:

(1) Reverend Tilton did not receive the money being collected; it was distributed to Indian ministers for their ministry and for food;

(2) It is illegal to take money out of India; and

(3) Contrary to the videotape and voice-over in the broadcast—which depicted the collection being taken ***while*** Reverend Tilton was preaching—Reverend Tilton ***was not*** preaching during the collection, and, in fact, the collection was taken when Indian ministers were preaching.

e. Each of the false and misleading statements specified above were maliciously made.

f. Exhibit 46 is an authentic copy of the July 9, 1992, *PrimeTime Live* broadcast.

36. Mail Frauds, 18 U.S.C. § 134I (the Trinity Foundation Rebuttal):

On or about September 24, 1992, Anthony deposited, or caused to be deposited, in the mails approximately 142 separate copies of Exhibit 49.

37. Obstruction of Justice, 18 U.S.C. § 1503 (Anthony affidavit):

On or about June 8, 1993, after having previously given sworn deposition testimony concerning the accuracy of the *Tilton Evidence Log*, Anthony, at the request of attorneys for ABC, signed an affidavit in *Tilton v. Capital Cities/ABC, Inc.*, before the United States District Court for the Northern District of Oklahoma, in which he falsely recanted his prior testimony.

38. Obstruction of Justice, 18 U.S.C. § 1503 (Guetzlaff affidavit):

On or about June 8, 1993, after having previously given sworn deposition testimony concerning the accuracy of the *Tilton Evidence Log*, Guetzlaff, at the request of attorneys for

ABC, signed an affidavit in *Tilton v. Capital Cities/ABC, Inc.*, before the United States District Court for the N. D. of Oklahoma, in which he falsely recanted his prior testimony.

39. Obstruction of Justice, 18 U.S.C. § 1503 (Holloway affidavit):

On or about June 8, 1993, after having previously given sworn deposition testimony concerning the accuracy of the *Tilton Evidence Log*, Holloway, at the request of attorneys for ABC, signed an affidavit in *Tilton v. Capital Cities/ABC, Inc.*, before the United States District Court for the N. D. of Oklahoma, in which he falsely recanted his prior testimony.

H. Prayer For Relief:

Accordingly, Plaintiffs respectfully pray that judgment be entered as follows:

a. For damages against the Defendants, and each of them, jointly and severally, in the amount proved at trial, such amount duly trebled as provided in 18 U.S.C. § 1964(c);

b. For attorney fees and costs, as provided in 18 U.S.C. § 1964(c);

c. For such other damages, pre- and post-judgment interest, and further relief, in law or equity, to which Plaintiffs may be justly entitled.

JURY DEMAND

Pursuant to Rule 38, *Fed. R. Civ. P.*, Plaintiffs hereby demand a trial by jury.

ACCORDINGLY, Plaintiffs pray that this court:

a. Enter judgment in favor of plaintiffs against all defendants for compensatory damages and exemplary or punitive damages in an amount to be determined at trial;

b. Enter judgment in favor or plaintiffs against the RICO Defendants for compensatory damages in an

amount to be proved at trial, but not less than $61,000,000, trebled as provided by statute;

c. Award to plaintiffs judgment for their costs against all defendants;

d. Award to plaintiffs judgment for their costs and reasonable attorney's fees against the RICO Defendants; and

e. Award plaintiffs such other and further relief, including pre- and post-judgment interest, in law or equity, to which plaintiffs may be entitled.

Respectfully Submitted,
/s/_____

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that one true and correct copy of the foregoing instrument was served on all lead counsel of record by first-class mail, postage prepaid, this 6th day of July, 1994.

/s/_____
JOHN L. ROSS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

No. 3-93CV2310-T
Filed MAY 9, 1994
Nancy Doherty, Clerk

WORD OF FAITH WORLD OUTREACH CENTER CHURCH,
A CHURCH ON BEHALF ITS MEMBERS, AND
WORD OF FAITH WORLD OUTREACH CENTER CHURCH, INC.,
A DISSOLVED CORPORATION, ON BEHALF OF ITS MEMBERS,
PLAINTIFFS,

VS.

DIANE SAWYER, CAPITAL CITIES/ABC, INC.,
AMERICAN BROADCASTING COMPANIES, INC.,
A. H. BELO CORPORATION *ET AL.*,
DEFENDANTS.

PLANTIFFS' SECOND AMENDED
RICO CASE STATEMENT

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TABLE OF CONTENTS

Page

PART ONE

STATEMENT OF FACTS

I.

THE PARTIES

A. THE CHURCH: 5

B. THE TRINITY DEFENDANTS: 8

1. Ole Anthony and the Trinity Foundation, Inc.: 8

a. Religious Bigotry: Desire to Shut Down Reverend Tilton's Ministries. 8

b. Personal Advancement: Desire to Host a Radio and Television Talk Show. 10

2. Harry Guetzlaff: 13

3. Powell Holloway: 13

C. THE ABC DEFENDANTS: 13

1. Diane Sawyer: 13

2. Roberta ("Robbie) Gordon and Jeff Cooke: 14

3. Kelly Sutherland: 15

4. Capital Cities/ABC Inc., American Broadcasting Companies, Inc., ABC News, Inc.: 15

D. THE DOE DEFENDANTS: 15

1. The Bank Doe Defendants: 15

Page

2. The IDM Doe Defendants:..... 15

3. The WOF Doe Defendants: 16

4. The Joyce-Pollard Doe Defendants: 16

II.

THE CONSPIRACY AND THE RACKETEERING ACTIVITY

A. INTRODUCTION: 17

B. THE CHURCH'S MAIL: 18

1. "Regular Mail" 19

2. "White Mail" 19

3. Mail Processing..... 20

C. THE RICO DEFENDANTS' FRAUDULENT SCHEME REVEALED: 22

D. OTHER ASPECTS OF THE CONSPIRACY AND PATTERN OF RACKETEERING ACTIVITY 25

Page

PART TWO
REQUIRED DELINEATION

1. SECTIONS VIOLATED: 28

2. THE DEFENDANTS, ALLEGED MISCONDUCT, AND BASES OF LIABILITY: 28

a. Trinity Foundation, Inc.: 28

b. Ole Anthony: 28

c. Harry Guetzlaff; 29

d. Powell Holloway: 29

e. Diane Sawyer: 29

f. Roberta ("Robbie") Gordon: 29

g. Kelly Sutherland: 30

h. Jeff Cooke: 30

i. Capital Cities/ABC Inc.: 30

j. American Broadcasting Companies, Inc.: 31

k. ABC News. Inc.: 31

l. The Doe Defendants: 32

3. OTHER WRONGDOERS: 32

4. VICTIM AND INJURY: 32

Page

a. The Church, Its Pastor, Its Members, Its Employees, and Its Ministry: 32

b. Commercial Bank & Trust Co. of Tulsa: 33

c. IDM: 33

d. Joyce & Pollard: 33

e. ABC Advertisers: 33

5. THE PATTERN OF RACKETEERING ACTIVITY: 34

a. Predicate Acts: 34

1) Wire Fraud, 18 U.S.C. § 1343 (unknown date, call from ABC to Wheymeyer): 34

2) Wire Fraud, 18 U.S.C. § 1343 (May, 1991, call from Sutherland to Anthony):: 34

3) Mail Fraud, 18 U.S.C. § 1341 (05/28/91 Anthony letter to Sutherland): 34

4) Mail Fraud, 18 U.S.C. § (05/28/91 Anthony letter to Sutherland): 34

5) Mail Fraud, 18 U.S.C. § 1341 (direct mailings): 34

6) Bank Fraud, 18 U.S.C. § 1344: 35

Page

7) Mail Fraud, 18 U.S.C. § 1341 (taking the Casey letter from the mail): 35

8) Mail Fraud, 18 U.S.C § 1341 (taking the Bray letter form the mail): 35

9) Mail Fraud, 18 U.S.C. § 1341 (taking the McDuffie letter from the mail): 35

10) Mail Fraud, 18 U.S.C. § 1341 (taking the Lowry letter form the mail): 36

11) Mail Fraud, 18 U.S.C. § 1341 (taking the Leon letter from the mail): 36

12) Mail Fraud, 18 U.S.C. § 1341 (taking the Perez letter from the mail): 36

13) Wire Fraud, 18 U.S.C. § 1343 (relating to "trash sweep A"): 36

14) Wire Fraud, 18 U.S.C. § 1343 (relating to Cooke's scheme to obtain employment with the Church under false pretenses; the California call): 37

15) Wire Fraud, 18 U.S.C. § 1343 (relating to Cooke's scheme to obtain employment with the Church under false pretenses; the Florida call): 37

16) Interstate Transportation of disks Stolen Goods, 18 U.S.C. § 2314 (the computer disks): 37

Page

17) Receipt of Property Stolen from Interstate Commerce 18 U.S.C. 2315 (the computer disks):.....37

18) Mail Fraud, 18 U.S.C. § 1341 (the ImageTech invoice): 38

19) Mail Fraud, 18 U.S.C. § 1341 (Gordon's Check to ImageTech): 38

20) Multiple Wire Frauds, 18 U.S.C. § 1343 (the Success in Life Infiltration):.....38

21) Wire Fraud, 18 U.S.C. § 1343 (the Lodge fax to Gordon): 39

22) Wire Fraud, 18 U.S.C. § 1343 (the Brewton fax to Gordon):.....39

23) Wire Fraud, 18 U.S.C. § 1343 (the November 21, 1991 broadcast): 39

24) Wire Fraud, 18 U.S.C. § 1343 (the November 28, 1991 broadcast):.....45

25) Interstate Transportation of Stolen Goods, 18 U.S.C. § 2314 (Anthony's "excess baggage"):.....45

26) Receipt of Property Stolen from Interstate Commerce, 18 U.S.C. § 2315 (Anthony's "excess baggage"): 46

27) Wire Fraud, 18 U.S.C. § 1343 (the June, 1992, call from Sawyer to Cohn): 46

Page

28) Wire Fraud, 18 U.S.C. § 1343 (the July 9, 1992, broadcast): 46

29) Multiple Mail Frauds, 18 U.S.C. § 1341 (the Trinity Foundation Rebuttal): 47

30) Obstruction of Justice, 18 U.S.C. § 1503 (Anthony affidavit): 47

31) Obstruction of Justice, 18 U.S.C. § 1503 (Guetzlaff affidavit): 47

32 Obstruction of Justice, 18 U.S.C. § 1503 (Holloway affidavit): 47

b. Circumstances of the Mail, Wire, and Bank Frauds: 48

c. Criminal Convictions: 49

d. Civil Litigation: 49

e. The "Pattern of Racketeering Activity" Formed by the Predicate Acts: 49

f. Relationships of the Predicate Acts to Each Other As Part of a Common Plan: 50

6. THE ENTERPRISE(S): 50

a. The Trinity Foundation, Inc.: 50

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise: 50

Page

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise: 51

3) Defendants Association with the Enterprise: 51

4) Relationship Between the Defendants and the Enterprise: 51

5) Status and Culpability of the Defendants in Relation to the Enterprise:....51

b. Capital Cities/ABC, Inc.: 52

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise: 52

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise: 52

3) Defendants Associated with the Enterprise: 52

4) Relationship Between the Defendants and the Enterprise: 52

5) Status and Culpability of the Defendants in Relation to the Enterprise:....53

c. American Broadcasting Companies, Inc.:....53

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise: 53

Page

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise: 53

3) Defendants Associated with the Enterprise: 53

4) Relationship Between the Defendants and the Enterprise: 54

5) Status and Culpability of the Defendants in Relation to the Enterprise:....54

d. ABC News, Inc.: 54

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise: 54

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise:....54

3) Defendants Associated with the Enterprise:....55

4) Relationship Between the Defendants and the Enterprise: 55

5) Status and Culpability of the Defendants in Relation to the Enterprise:....55

e. IDM:....56

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise: 56

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise:....56

Page

3) Defendants Associated with the Enterprise: 56

4) Relationship Between the Defendants and the Enterprise: 56

5) Status and Culpability of the Defendants in Relation to the Enterprise: 56

f. The Bank: 56

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise: 56

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise: 57

3) Defendants Associated with the Enterprise: 57

4) Relationship Between the Defendants and the Enterprise: 57

5) Status and Culpability of the Defendants in Relation to the Enterprise: 57

g. The Church: 57

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise: 57

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise: 57

3) Defendants Associated with the Enterprise: 58

Page

4) Relationship Between the Defendants and the Enterprise: 58

5) Status and Culpability of the Defendants in Relation to the Enterprise:..... 58

h. Joyce & Pollard:..... 58

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise: 58

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise:..... 58

3) Defendants Associated with the Enterprise:..... 58

4) Relationship Between the Defendants and the Enterprise: 59

5) Status and Culpability of the Defendants in Relation to the Enterprise:..... 59

i The Association Enterprise:..... 59

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise: 59

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise:..... 59

3) Defendants Associated with the Enterprise:..... 59

4) Relationship Between the Defendants and the Enterprise: 59

Page

5) Status and Culpability of the Defendants in Relation to the Enterprise:.....60

7. THE MERGER:.....60

a. The Trinity Foundation:.....60

b. Capital Cities/ABC, Inc.:.....60

c. American Broadcasting Companies, Inc.:.....60

d. ABC News, Inc.:.....60

e. IDM:.....60

f. The Bank:.....60

g. The Church:.....60

h. Joyce & Pollard:.....61

i. The Association Enterprise:.....61

8. RELATIONSHIP BETWEEN THE PATTERN OF RACKETEERING AND THE ENTERPRISE:.....61

a. The Trinity Foundation:.....61

b. Capital Cities/ABC, Inc.:.....61

c. American Broadcasting Companies, Inc.:.....61

d. ABC News, Inc.:.....62

e IDM:.....62

Page

f. The Bank: 62

g. The Church: 62

h. Joyce & Pollard: 62

i. The Association Enterprise: 63

9. BENEFITS RECEIVED FROM THE PATTERN OF RACKETEERING ACTIVITY: 63

a. The Trinity Foundation: 63

b. Capital Cities/ABC, Inc.: 63

c. American Broadcasting Companies, Inc.: 63

10. EFFECTS OF THE ACTIVITIES ON INTERSTATE COMMERCE: 64

11. SECTION 1962(A) VIOLATIONS: 64

12. SECTIONS 1962 (B) VIOLATIONS: 64

13. SECTION 1962 (C) VIOLATIONS: 64

a. Defendants Employed or Associated with the Enterprise(s): 64

b. Distinctions Between the "Persons" and the "Enterprise(s)": 64

14. SECTION 1962 (D) VIOLATIONS: 64

15. INJURY TO BUSINESS OR PROPERTY: 65

Page

16. CASUAL RELATIONSHIP BETWEEN THE INJURY AND THE PATTERN OF RACKETEERING ACTIVITY: 66

17. DAMAGES SUSTAINED AND DEFENDANTS' LIABILITY: 67

18. OTHER FEDERAL CAUSES OF ACTION: 67

19. PENDENT STATE LAW CLAIMS: 67

20. ADDITIONAL INFORMATION HELPFUL TO THE COURT: 67

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

No. 3-93CV2310-T

WORD OF FAITH WORLD OUTREACH CENTER CHURCH, A CHURCH ON BEHALF ITS MEMBERS, AND WORD OF FAITH WORLD OUTREACH CENTER CHURCH, INC., A DISSOLVED CORPORATION, ON BEHALF OF ITS MEMBERS,

PLAINTIFFS,

VS.

DIANE SAWYER, CAPITAL CITIES/ABC, INC., AMERICAN BROADCASTING COMPANIES, INC., A.H. BELO CORPORATION *ET AL.*,

DEFENDANTS.

PLAINTIFFS' SECOND AMENDED RICO CASE STATEMENT

Pursuant to this court's March 21, 1994, *Order Regarding RICO Claim*, plaintiffs, Word of Faith World Outreach Center Church, Inc., a dissolved non-profit corporation on behalf of its members ("WOF, Inc."), and Word of Faith World Outreach Center Church, a church and unincorporated association on behalf of its members ("WOF"),[1] respectfully, file this *RICO Case Statement*:[2]

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[1] At all relevant times in connection with the RICO claims made in this case, WOF, Inc., was plaintiffs' legal form of organization. Later, WOF, Inc., transferred all its assets to WOF and on a later date dissolved. WOF, Inc., is authorized to maintain this action, notwithstanding its dissolution, under art. 1396-7.12(A)(1) and (2), TEX. CORP. ACT. For ease of reference, both entities will collectively be referred to as "the Church."

[2] Because of the number of parties, and the scope, breadth, and duration of the RICO Defendants' conduct, in order to facilitate a clear understanding of the Church's claims, this *RICO Case Statement* is divided into

PART ONE
STATEMENT OF FACTS

The RICO claims in this case arise from an unholy alliance between a small group of religious zealots opposed to the Church's teachings and beliefs[3] and a band of secular representatives[4] of a powerful national news organization.[5] Both were intent on destroying the reputation and livelihood of the Church's pastor, terminating the Church's national television ministry and shutting the doors of the Church—all because of the gang's own personal religious bigotry and desires to personally and professionally profit from their public persecution of the Church.

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two parts. *Part One* is a narrative statement of the facts on which the lawsuit is based, and an explanation of the nature of the Church's contentions and the evidence on which they are based. *Part Two* is the specific numbered/lettered-paragraph-statement of the case required by the court's order.

Additionally, because the Church has, since its RICO claims were originally filed in the *Amended Complaint*, obtained access through related litigation to thousands of additional documents and videotapes, the Church will, within the week, be filing a motion for leave to amend to file a *Second Amended Complaint* that: (1) conforms the Church's pleadings with the expanded statement of RICO allegations made herein against the Trinity Defendants and the ABC Defendants; and (2) for now, at least pending completion of additional discovery, deletes the Church's RICO allegations against the Belo Defendants (Belo, the *Dallas Morning News*, WFAA, Housewright, Brown, Bark, and Blow).

[3] The Trinity Foundation, Inc., Ole Anthony, Harry Guetzlaff, and Powell Holloway (collectively, "the Trinity Defendants").

[4] Roberta Gordon, Diane Sawyer, Kelly Sutherland, Jeff Cooke and an unknown number of as yet unidentified John or Jane Does.

[5] Capital Cities/ABC Inc., American Broadcasting Companies, Inc., ABC News, Inc. Collectively, Gordon, Sawyer, Sutherland, Cooke and the three corporate entities will be referred to as the "ABC Defendants." Collectively, the Trinity Defendants, the ABC Defendants, and the unidentified Does will be referred to as "the RICO Defendants."

"NO FRAUD TO BE HAD ON THIS GUY—CAN HAVE FUN WITH HIM THOUGH."

Together, beginning in the Spring of 1991, through the pattern of racketeering activity described below, the RICO Defendants devised a scheme whereby they would create, publish, circulate and nationally broadcast "news" stories about the Church and its pastor that they knew to be false and fraudulent and based on "evidence" fraudulently and illegally manufactured by the RICO Defendants and, further, would work to conceal their racketeering activity even after the broadcasts. Working in active concert and participation with one another, the RICO Defendants launched a summer-long "investigation" of the Church and its ministries beginning in May, 1991, that culminated in three separate national television broadcasts of ABC's *PrimeTime Live* with Diane Sawyer—November 21 and 28, 1991, and July 9, 1992—each of which were replete with statements concerning the Church, its pastor and its ministries that were known to the RICO Defendants to be false and fraudulent.[6]

For example, the reports included, *inter alia*, repeated assertions that prayer requests mailed to the Church were routinely dumped in the trash at the bank and data processing center after removal of donations—rather than prayed over by the Church's head pastor, the Reverend Robert Tilton—when the RICO Defendants knew the "trash" depicted on the broadcasts consisted of: (1) Church mailings received directly by ABC operatives who had fraudulently placed their names on the Church's mailing lists, and which had never been mailed back to the Church; (2) items obtained from the Church by the RICO Defendants while surreptitiously attending worship

[6] Exhibit 31 is a transcript of the November 21, 1991 broadcast. Exhibit 32, Exhibit 33, and Exhibit 46 are videotapes of each of the three broadcasts, respectively. Exhibit 45 purports to be4 a transcript of the July 9, 1992, broadcast, but does not completely track ABC's videotape.

services at the Church, and which also were never mailed back in to the Church; (3) "regular mail" and other items stolen by the RICO Defendants from the bank and data processing company which initially processed the Church's mail; and (4) "white mail" stolen from either the bank or the Church.[7] The knowing falsity of the broadcasts is best summarized by ABC's own internal documents (Exhibits 10 and Exhibit 11), recently obtained, in which the ABC Defendants acknowledged, concerning the Church's head pastor: "NO FRAUD TO BE HAD ON THIS GUY—CAN HAVE FUN WITH HIM THOUGH" (capitalization original). Additionally, the ABC Defendants have subsequently admitted in another federal court proceeding that much of the "mail" depicted on the broadcasts as having been "found" in the trash were, in fact, Church mailings received directly by ABC operatives who had fraudulently placed their names on the Church's mailing lists, and which had never been mailed back to the Church. Exhibit 66 and 67.

> Tape 205, as its label suggests, contains shots of mailings sent out by Robert Tilton or his ministry. ABC journalists received these mailings directly from Mr. Tilton's organization and through others on Mr. Tilton's mailing list during the course of their factual investigation preceding the broadcast. None of the materials that are pictured on Tape 205 were found . . . in the trash.[8]

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[7] "Regular mail" consists of items, *e.g.*, prayer requests, prayer cloths, *etc.*, ***returned*** to the Church from partners on the Church's mailing list, which were originally enclosed in mail sent from the Church to the partner. "White mail" is unsolicited mail and other items, such as a note on personal stationery, initiated in the first instance by a member of the public and received by the Church. Both terms are described in more detail below.

[8] Contrary to any fair viewing of the broadcasts, ABC now contends that the broadcast did ***not*** represent that these items had been found in the trash.

As a result of the three *PrimeTime Live* broadcasts the Church, its pastor, and the Church's ministries have been subjected to public scorn and derision, subjected to numerous investigations by local, state, and federal authorities,[9] the Church's television ministry has been forced to close, resulting in the loss of employment and personal financial hardship for ***approximately 800 Church employees and their families***, and the Church's membership and outreach ministries have been significantly reduced. This *RICO Case Statement* explains the corrupt methods and the pattern of racketeering activity by which these results were obtained.[10]

---

[9] Despite investigations launched at the urging and insistence of the RICO Defendants by, *inter alia*, the Dallas County District Attorney's Office, the Dallas Central Appraisal District, the Texas Attorney General, the Internal Revenue Service, and the U.S. Postal Service, not one criminal charge or complaint has been filed against the Church, its pastor, or any of its employees relating to the matters contained in the broadcasts.

[10] Many of the Church's contentions concerning its RICO claims in this lawsuit are also described in detail in audio-visual form in Exhibit 48, a tape of a program entitled *PrimeTime Lies*, in which the Church broadcast a televised rebuttal to the *PrimeTime Live* accusations, and which is incorporated by reference. The Church invites the court to review Exhibit 48. Additionally, because no discovery has as yet taken place in this case, and as the Church has only recently obtained access through other related litigation to over 15,000 documents and videotapes produced by ABC, the Church reserves the right to seek leave to amend its explanation and pleading of RICO claims, as necessary.

I.
THE PARTIES:

A. The Church:

The Church is a Christian church with a membership numbering in the thousands based in Farmers Branch, Texas, a Dallas suburb. *See Word of Faith World Outreach Ctr. Church v. Morales*, 787 F.Supp. 689 (W.D. Tex. 1992), *rev'd*, 986 F.2d 962, 963 (5th Cir. 1993)(12-13,000 members; 500,000 on mailing list). At all relevant times, its head pastor was, and remains, Reverend Robert Tilton. At the time of the events complained of in this lawsuit, the Church had approximately 8,000 local members in the Dallas area who regularly attended services at the Church's Farmers Branch sanctuary. Between 3,000 and 5,000 people normally attended the Church's weekly Sunday morning services. In addition, at the time of the events complained of in this lawsuit, the Church's services reached a national television audience estimated to be in the hundreds of thousands, many of whom supported the Church spiritually and financially and considered themselves to be Church members. Additionally, at the time of the events complained of in this lawsuit, the Church provided financial support to numerous ministries and outreaches, *e.g.*, orphanages, missions, *etc.*

The Attorney General of Texas has acknowledged that the Church constitutes a *bona fide* Church, and that its religious beliefs are sincerely held. *See Word of Faith World Outreach Center Church, Inc. v. Morales*, 986 F.2d at 963, n. 1. Similarly, the Church holds a non-profit tax exempt status under § 501(c)(3) of the INTERNAL REVENUE CODE, and recently in an *Agreed Judgment* entered in *Word of Faith World Outreach Center Church v. Dallas Central Appraisal District*, Cause No. 93-11738, in the 44th Judicial District Court, Dallas County, Texas, the Dallas County Central Appraisal District conceded that Church property being used by the Church for religious purposes at its Farmers Branch facility qualified

for exemption from property tax as property of a "religious organization" under § 11.20 of the TEXAS PROPERTY TAX CODE.[11]

One of the central beliefs of the Church and its members is the importance and necessity of tithing and the making of vows to God through the Church. Among other things, the Church teaches and its members believe that financial support is required by the Bible and must be freely given. The Church and its members also believe the expressions of faith and trust as manifested by financial vows to God, through the Church, are rewarded, and that the faithful will prosper physically, spiritually, and financially. The class of churches that subscribes to this interpretation of the Holy Scriptures is often referred to as "prosperity" churches. The message of churches that belong to this "class" is often referred to as a "prosperity message." Prosperity churches teach that people can, may, and should make vows out of their need and not out of the need of the Church. The Church and its members believe that God answers prayers and that God wants all people to prosper spiritually, physically and financially. The Church and its members believe that God performs miracles today just as Christ performed miracles. All of the prayers that the Church offers its members are free, and the Church has never

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[11] To qualify as a "religious organization" entitled to property tax exemption under § 11.20, the Church must demonstrate, *inter alia* that it: (1) is organized and operated primarily for the purpose of engaging in religious worship or promoting the spiritual development or well-being of individuals; (2) is operated in a way that does not result in accrual of distributable profits; (3) is operated in a way that does not result in realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered; (4) is operated in a way that does not result in realization of any other form of private gain; and (5) that, under the Church's governing documents, upon dissolution the assets of the Church will be transferred to another entity that is exempt from federal taxation under § 501(c)(3) of the INTERNAL REVENUE CODE.

sold or performed any miracles. The Church and its members believe that Christ performs many miracles in answer to the prayers of its ministers and of its followers. The beliefs of this Church and its members are based exclusively on the Word of God as revealed in the Holy Scriptures. The Church's central beliefs are summarized in *Word of Faith World Outreach Center Church-Statement* and *Word of Faith World Outreach Center Church - What We Believe*. True and correct copies were attached to the *Original Complaint* as exhibits "A" and "B," respectively.

Prosperity class churches believe that members of the Church should tithe through the Church, and that the tithe belongs to God. In addition to giving tithes, prosperity churches teach that members should also give offerings to the church in addition to their tithe.

Prosperity churches are a relatively new and comparatively small, distinct religious class of churches. The message of prosperity churches is also relatively new and is not accepted by nor acceptable to well-established, conventional Christian denominations such as the Baptist, Methodist, Presbyterian, Lutheran or Catholic churches. Prosperity churches are, by reason of their newness and the nonacceptance of their message by the mainstream of society, often the target of persecution, ridicule, and continuous attempts by those in the mainstream to eradicate this prosperity religious message that they abhor.

B. The Trinity Defendants:

1. Ole Anthony and the Trinity Foundation, Inc.:

Ole Anthony is the founder and, at all relevant times relating to this litigation, the President and a member of the Board of Directors of the Trinity Foundation, Inc. ("Trinity Foundation"). The Trinity Foundation is a Texas non-profit corporation, founded by Anthony January 12, 1973. Exhibit 1. It purports to have been formed for the purpose of (*id.*):

> . . . promoting the public interest in the State of Texas by organizing, designing, producing, presenting, operating, and supporting Christ-centered communications projects, including radio and television programs and presentations, movies and film productions, and in general all types of communications which will convey the love of Christ to the general public.

The foundation occupies several houses and condominiums in Dallas, Texas, where it houses a small community of believers in a communal living arrangement.

With the exception of 1988 when he was ill, Anthony has been President of the Trinity Foundation since its inception. He has been a board member every year since the Trinity Foundation's inception, including 1988. Exhibit 50, pp. 15-19. As relates to this case, Anthony is a man fueled by two burning passions: religious bigotry towards television ministry, and a deep desire for personal promotion through use of the media.

a. Religious Bigotry: Desire to Shut Down Reverend Tilton's Ministries.

First—by his own admission—Anthony has waged a "holy war" against television ministers. Exhibit 54, p. 63.[12] As early as October 6, 1987, in testimony before the House Ways and Means Committee (Exhibit 2, pp. 3-4), Anthony accused Reverend Tilton of "franchising" his ministry and of operating a "heavenly lottery." In denunciation of television ministries generally,[13] and Reverend Tilton specifically, Anthony has regularly appeared on talk radio and tabloid televi-

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[12] "Q. Is it a fair statement that you have basically waged a holy war against TV preachers? A: TV preachers that are committing fraud. Q: Is your answer yes, subject to that limitation? A: Yes."

[13] Anthony has repeatedly stated that being a member of an "electronic church provides about as much true fulfillment as being married to a rubber dolly." *E.g.*, Exhibit 2, p. 2; Exhibit 4, p. 2.

sion, *e.g.*, *Current Affair, Inside Edition, Entertainment Tonight, The Maury Povich Show, KXAS Spectrum,* KEGL-FM, and KLIF-AM, and through the Trinity Foundation has held numerous press conferences and given countless interviews to print media to vent his invective.

In simple terms, for years, Anthony's aim has been to shut down Reverend Tilton's ministry. *See National Organization for Women, Inc., v. Scheidler*, ___ U.S. ___, 114 S.Ct. 798 (1994)(motive to shut down abortion clinics is sufficient motive to support RICO claims; economic motive not required). Two of these "interviews" are particularly revealing concerning Anthony's passionate desire to close down the Church. First, in a taped interview with defendant Sawyer shortly before the initial *PrimeTime Live* broadcast, Anthony stated (Exhibits 72 and 73):

> Sawyer: In other words, I don't think you can get to him [Tilton].
>
> Anthony: Again, it's the sleaze factor. I . . . I don't want this on the air.
>
> Sawyer: No.
>
> Anthony: I'm the incoming president of the Texas Grand Jury Association, and I've served on many grand juries, and we have tried sev . . . three or four different instances to get an indictment, and it's obvious—because it's commercial fraud—but always the DA is without courage or something takes place where they won't proceed that final step, that little oomph! Well, this program can be the little oomph! that would cause a whole lot of these charlatans to be investigated. This is—I mean that's why I am so excited about this because, this thing—I mean I'm a believer, without question. I live what I believe—24 hours a day. We got AIDS—I've got an AIDS guy living in the house. Crack cocaine addicts that I have to live their battles day and night trying to

> get rid of the monkey. And, these guys are blaspheming my Father. Their saying that my Father rewards greed, and that's a lie from the depths of Hell.[14]
>
> Sawyer: Okay, let's go back on camera and I'll ask the last thing again. . . .[15]
>
> * * * * * *
>
> Sawyer: And [what's] the moral, the lesson of [*sic*] these men?
>
> Anthony: "There must needs be offenses, but woe onto whom by which the offense cometh." I believe they are the ones offending, and woe onto them.

Second, in the December 5, 1991, issue of the *Dallas Observer*—less than two weeks after the initial *PrimeTime Live* broadcast aired—Anthony told the paper (Exhibit 75):

> My prediction is that Word of Faith won't be around in four years, and the land where the church once stood will be a parking lot. . . . It'll be covered with cracks with weeds growing through them, and birds of flight will nest in the remains of the building.

Even before the initial broadcast, however—indeed, early in the RICO Defendants' "investigation"—ABC itself recognized that Anthony's religious prejudice tainted his credibility. In another internal ABC memo (Exhibit 6) one of the PrimeTime Live producers described Anthony as an

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[14] Perhaps a more accurate transcript of the statement would change "Father" to "father" and "Hell" to "hell," as Anthony boasts on his resume that he was once expelled from high school for refusing to capitalize the word "God," and was once arrested for burning a cross on Easter Sunday. Exhibit 54, p.64.

[15] True to Sawyer's promise to her coconspirator, Anthony's plain statement of his motives was not included in any of the three *PrimeTime Live* broadcasts.

"insecure little wimpy guy" who was "totally untrustworthy" and stated (capitalization original):

> [Anthony] has real ax [*sic*] to grind obsessed with him [Tilton]—I don't feel TOTALLY comfortable with ole anthony either—on crusade against him [Tilton] in the name of christ

b. Personal Advancement: Desire to Host a Radio and Television Talk Show.

Anthony, however, was motivated by secular as well as "heavenly" concerns. On July 10, 1991—just a few short weeks after Anthony and the ABC Defendants began conspiring together concerning their "investigation" of the Church—Trinity Foundation employee, Board member and RICO Defendant Harry Guetzlaff, on behalf of the Trinity Foundation, mailed to Dallas television station KDAF, Fox Channel 33, a detailed proposal for a weekly television talk show called "*Night-Talk*," to be hosted by Anthony and produced by the Trinity Foundation (Exhibit 7). The proposal described Anthony as:

> the single most exciting and compelling moderator, interviewer and personality available today . . . with demonstrable success, particularly to the 18-34 demographic. He's unique: a scientist, business executive, politician, author, spy, social activist, hostage, philosopher, public speaker—the list goes on and on. He possesses two attributes critical to your desire to produce public service programming that will generate controversy and resultant ratings . . . .
>
> * * * * * *
>
> As [David] Letterman was to [Johnny] Carson, Ole Anthony and *Night-Talk* are to all previous talk-shows. Letterman parodies the TV talk-shows, makes fun of himself, mocks <u>all</u> institutions and personal posturing, asks embarrassing questions and challenges hype. So does Ole Anthony, but with

> the added touch of reaching out into the audience and involving them in the program.

The proposal suggested simulcasting *Night-Talk* on an area FM radio station and predicted "[t]he scope and impact possibilities are phenomenal." Additionally, notwithstanding the Trinity Foundation's non-profit status and stated purpose of "supporting Christ-centered communications projects . . . which will convey the love of Christ to the general public," the proposal stated, "[t]he production of shows like *Night-Talk* is the reason Trinity Foundation exists . . ." and touted as one of the key advantages to having the Trinity Foundation produce the show that, "[a]ll the traditional benefits of a not-for-profit organization would apply, including . . . tax deductions."

Finally, the proposal boasted: "Trinity Foundation has a proven track record of credibility with local and ***national*** media. We are able to generate an incredible amount of media coverage on short notice."[16] The list of endorsements and references included in the proposal included defendants *Dallas Morning News* and Ed Housewright.[17] In short, given his

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[16] Emphasis added.

[17] As described in more detail below, Anthony and defendants Gordon and Cooke later used the *Night-Talk* proposal as the basis for seeking an undercover interview with Jim Moore, head of Response Media, the printing company that prints the Church's mailings. During the interview, Anthony told Moore about the *Night-Talk* proposal, plans to be syndicated nationally, and sought Moore's help in combining the program with a direct mail operation. Exhibits 13, 14, and 51, p. 182 (emphasis added):

> I went in [to see Moore at Response Media] as myself. ***We were in negotiation at the time with Fox Television to produce a talk show*** and we went into Response Media to ask them, what's a way—how would you handle the anticipated large amount of mail that were to come in. That's what the basis upon [*sic*] going in there. That was the basis.

secular television pursuits, and given that—notwithstanding his "holy war" against television ministries and their fund-raising—as late as December 15, 1987, Anthony advocated tithing to his followers,[18] one can't help but wonder whether Anthony's ferocious attacks on Reverend Tilton and the Church aren't, at root, simply a crude but basic, secular economic competition for the contributions available from the limited donor pool.[19]

2. *Harry Guetzlaff:*

Guetzlaff—a one time follower of Reverend Tilton—is, and was at all relevant times, an employee and board member of the Trinity Foundation.

In sworn deposition testimony in another pending lawsuit, Anthony has testified that what he told Moore about *Night Talk* and the negotiations with Fox Television was true. Exhibit 52, pp. 161-162:

Q: Did you lie to Jim Moore when you were there?

A: I don't believe I lied.

Q: You never lied to him?

A: I don't believe so.

* * * * * *

Q: Did you tell a lie while you were at Response Media?

A: I don't believe I did.

Q: Did you go in absolutely above board and honest with Mr. Moore and Response Media, then?

A: Except for the existence of the hidden camera. . . . It was covert on the part of the ABC it wasn't covert on my part. I went in as myself.

See also Exhibit 9.

[18] Exhibit 3: "The tithe is the first fruit of all of our increase. The tithe is paid before taxes, before bills, before even the baby is fed."

[19] Exhibit 5: "The only possible interaction with a televangelist is to mail in a donation, Anthony said. And enough people have been drawn to the audacious claims and flamboyant spectacle they offer that televangelists have become 'multi-million dollar businesses battling for mailing lists.'" Anthony himself estimates that at any given time there is a limited donor pool of about five million. Exhibit 4.

3. Powell Holloway:

Holloway is Director of Development for the Trinity Foundation.

C. The ABC Defendants:

1. Diane Sawyer:

Sawyer is a co-anchor of *PrimeTime Live* and narrated all three *PrimeTime Live* segments on the Church. She, too, had dual motives of religious bigotry and personal profit. In a June, 1992, phone call with Connie Cohn, a woman Sawyer interviewed for the third *PrimeTime Live* broadcast, Sawyer told Cohn that she (Sawyer) "was appalled" when she saw Reverend Tilton on TV, and vowed "He needs to be stopped." Additionally, for more than a year before the original *PrimeTime Live* broadcast concerning the Church, *PrimeTime Live's* ratings were low, consistently at or below a 10 point rating. Exhibit 8. After the original November 21, 1991, broadcast—aired during "sweeps" month—the show's ratings soared over one-third, and it has now been reported in the national press that Sawyer recently received a new multi-million dollar contract from ABC.[20]

2. Roberta ("Robbie") Gordon and Jeff Cooke:

Gordon is a producer for *PrimeTime* and is the producer for the three *PrimeTime Live* segments concerning the Church. Jeff Cooke was one of, if not the primary, cameraman who filmed the clips used in the segments. Their disdain for the Church—and for organized religion generally—is evi-

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[20] The attractiveness of a "juicy" story about "televangelists" was not lost on Anthony either. A Trinity Foundation press release (Exhibit 5) states: "The *ABC Nightline* report on the fall of Jim and Tammy Bakker still ranks as one of its highest rated programs, Anthony said, and demonstrates how wide the interest is in the televangelist phenomenon." As ABC produces both *PrimeTime Live* and *Nightline*, that attractiveness, necessarily, wasn't lost on the ABC Defendants either.

denced by repeated derogatory, vulgar and obscene language captured on ABC's own "undercover" video-tapes made during their surreptitious sojourns to Sunday morning worship services, including numerous uses of "f***" and other variations thereof, and discussions of sexual prowess and sexual response—all while in the Church's Sanctuary. Additionally, in connection with the "investigation," in one videotape believed to have been made by Cooke, ABC spent nearly 15 minutes taking various shots of a cemetery headstone containing the name "Robertson," but with the view angled to read simply "Robert," with the obvious intent of conveying the message that ABC would "bury" Robert Tilton. Exhibit 70.

3. Kelly Sutherland:

Sutherland is also a producer for PrimeTime Live, and is specifically given credit as co-producer of the July 9, 1992, segment. Likewise, at the conclusion of the November 21, 1991, broadcast, Sawyer specifically gave Sutherland credit and praise for her work as part of ABC's "investigative team" concerning the reports.[21] Sutherland is believed to be the author of the internal ABC memo that acknowledges: "NO FRAUD TO BE HAD ON THIS GUY—CAN HAVE FUN WITH HIM THOUGH." Exhibits 10 and 11.

4. Capital Cities/ABC Inc., American Broadcasting Companies, Inc., ABC News, Inc.:

These entities are the corporate employers, or otherwise ratified the actions, of the other ABC and Doe Defendants.

D. The Doe Defendants:

1. The Bank Doe Defendants:

As is described in greater detail below, one or more employees of Commercial Bank and Trust ("the Bank"), in

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[21] Sawyer also gave praise and credit to Gordon and Anthony.

Tulsa, Oklahoma ("the Bank Doe Defendants"), operated as agents for one or more of the other RICO Defendants to steal mail, money, prayer requests and other property of the Church that was in the custody of the Bank and moving as part of interstate commerce.

2. *The IDM Doe Defendants:*

As is described in greater detail below, one or more employees of Internal Data Management ("IDM"), in Tulsa, Oklahoma ("the IDM Doe Defendants"), operated as agents for one or more of the other RICO Defendants to steal mail, prayer requests and other property of the Church that was in the custody of IDM and moving as, or as part of, interstate commerce, and to steal one or more computer data disks—and the confidential, constitutionally protected information contained thereon—for "decoding" by Gordon.

3. *The WOF Doe Defendants:*

As is described in greater detail below, one or more employees of the Church ("the WOF Defendants"), operated as agents for one or more of the other RICO Defendants to steal "white mail" and other property of the Church that was in the custody of the Church.

4. *The Joyce-Pollard Doe Defendants:*

As is described in greater detail below, one or more employees or servants of the Church's attorneys, the Tulsa law firm of Joyce & Pollard ("the Joyce-Pollard Doe Defendants"), operated as agents for one or more of the other RICO Defendants to steal confidential attorney-client communications, documents protected by the attorney work-product privilege, and other records and property of Joyce & Pollard or the Church that was in the custody of Joyce & Pollard.

II.
THE CONSPIRACY AND THE RACKETEERING ACTIVITY

A. Introduction:

To succeed in their religious and secular objectives, the RICO Defendants had to "get" Reverend Tilton, *i.e.*, to discredit him, his ministry, and the sincerity of his religious beliefs and those of some of his followers—those who professed to having been healed or to have received other miracles through the Church's ministry. *E.g.*, Exhibits 15 (Gordon, to Anthony and Cooke on the way away from Response Media after their "undercover" interview with Moore: "I don't feel like we've got him ***nailed*** right now."); 72 and 73 (Sawyer, to Anthony in the presence of Gordon: "But, I don't think you can ***get*** to him."); Tape 56 (Gordon, to Cooke while in the Church and with reference to a healed parishioner: "I love the bit where they cried. I hope you got it. If we f****d up again . . . I love the tears, the people with the tears, because if we f****d up one more time, I'll die!").

The means to this end were three nationally televised broadcasts of *PrimeTime Live*, broadcast on November 21 and 28, 1991, and July 9, 1992. Although the *numerous* knowingly and maliciously false, fraudulent, and misleading statements made concerning Reverend Tilton, the Church, and its ministries will be detailed further below, the crux of the broadcasts' broadsides were the representations made to the public that, contrary to promises allegedly made by Reverend Tilton, "thousands" of prayer requests received from followers were callously thrown "in the garbage at the bank [and] in the marketing research center." All of this "garbage" was represented to have been "found" in three separate "trash sweeps" each conducted over several days in September and October, 1991, by one or more of the Trinity Defendants at the direction and under the supervision of Gordon and other ABC representatives.

Not satisfied, however, with merely falsely smearing Reverend Tilton and the Church in the broadcasts, the RICO Defendants sought to enlist the aid of criminal investigations of Reverend Tilton and the Church by local, state and federal law enforcement authorities. To further this objective, Anthony, Guetzlaff, and Holloway—the three self-described Trinity Foundation "garbologists" who allegedly "found" most of the trash—created a *Tilton Evidence Log* (Exhibit 44), which purported to be a detailed inventory of items the trio had "found" in the trash, including the date and location of each "find." In sworn deposition testimony given in a state court civil lawsuit in November, 1992 (*see, e.g.,* Exhibits 50 through 54), all three testified to the accuracy of the *Tilton Evidence Log*. Indeed, Anthony, the holy crusader, testified (Exhibit 52, pp. 196-197):

> Q. If after all of the dust has settled and we've gone through all these documents and it were to be shown to you . . . that your characterization of documents is absolutely incorrect and that it, in fact, is not possible for some of the documents to be obtained from the places and at the times that your log shows them to have been obtained, I mean absolutely not possible, and this could be established to you by way of evidence which you no doubt would believe, would you be willing to give a public apology to Reverend Tilton and Word of Faith Church?
>
> ***A: I'd get down on my knees before him.***

However, when unimpeachable testimony and evidence presented in a hearing before the United States District Court for the Northern District of Oklahoma, held in June 2-7, 1993, established that, in fact, the documents listed on the log ***could not*** have been found at the times and places indicated—indeed, ***in some instances the items hadn't even yet been mailed at the time Anthony, Guetzlaff, and Holloway claimed to have "found" the item***—instead of falling on their knees all three raised their right hands and signed false affida-

vits in the federal court proceeding, recanting their prior sworn testimony. Exhibits 62-64.

B. The Church's Mail:

Key to understanding how the RICO Defendants' scheme came unraveled is an understanding of how the Church handled the tens of thousands of pieces of mail it received monthly from followers.

1. "Regular Mail"

On a regular basis, the Church mails numerous items of correspondence to "partners" who have asked that their names be placed on the Church's mailing list.[22] Often, these mailings include preprinted materials or other items that the partner can return to the Church in an enclosed preaddressed envelope, *e.g.*, a prayer cloth, vials of Holy Water obtained from the River Jordan, prayer requests that the partner can fill out and mail back in, and which Reverend Tilton has promised to pray over.[23] Return mail items received from a partner are described as "regular mail." All regular mail is created by the Church and its employees, and is ***printed*** in Tulsa, Oklahoma, by a company called Response Media.

2. "White Mail"

The Church also routinely receives thousands of unsolicited pieces of mail initiated by a non-partner sender, *e.g.*, a request to become a partner and be placed on the mailing list, a personal letter or note on the sender's own stationery, *etc.* These items are referred to as "white mail" because they usually come in the sender's own white envelope. ***Neither the Church nor Pastor Tilton have ever made any representa-***

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[22] The Church does not "prospect" mailing. Mail is only sent to persons who have ***asked*** that their name be placed on the mailing list.

[23] Some of the items sent to partners are intended for their keeping and not to be returned to the church.

tions or promises concerning how "white mail" will be processed or handled.

3. Mail Processing:[24]

To ensure accountability and to provide reliable financial records for budgetary, tax and auditing purposes of both the Church and its partners—and precisely to ***avoid*** allegations of financial impropriety—the Church established a sophisticated document and financial accounting system to account for every piece of mail received and every penny donated to the Church. Four different entities are involved: the United States Postal Service, Commercial Bank & Trust Co. of Tulsa, Oklahoma ("the Bank"), Internal Data Management of Tulsa ("IDM"), and the Church. *See* Exhibits 34, 42, 43, and 56-61.

STEP 1: Upon receipt in Dallas of mail addressed to the Church—regular or white—the United States Postal Service, without delivering it to the Church, automatically forwards the mail to the Postal Service in Tulsa. Upon arrival in Tulsa, the United States Postal Service delivers the mail to the Bank.

STEP 2: Upon receipt at the Bank, the envelopes are opened by a bank employee who:

- checks to see if there is a check or money in the envelope and, if so, remove it;
- notes the amount, if any, on the front of the envelope in a color-coded ink;[25]
- returns all other contents of the envelope to the envelope; and
- sorts the envelops for batching.

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[24] The mail processing system is recounted in detail in the sworn testimony and report—admitted without objection by any of the ABC Defendants—given in *Tilton v. ABC* by Mark Alan Buntz, a certified public accountant with Arthur Andersen & Co. Exhibit 58

[25] Each Bank employee is assigned a different color.

Receipts are totaled and recorded on a *Batch Control Card* and all moneys are deposited into the Church's account. All items are then bagged in Postal Service bags and forwarded by courier to IDM. ***Nothing is discarded by the Bank.***

STEP 3: Upon receipt by IDM:

- the items are counted and the count checked against the *Batch Control Card* and, if necessary, reconciliation reports are sent to the Bank;
- the items are then sorted into batches of 40 and assigned to an IDM employee who reads every item of an envelope's contents to determine appropriate further handling;[26]
- all preprinted "regular mail" items to be returned to the Church contain partner code numbers that facilitate identification of the partner and corresponding recordkeeping; accordingly, for "regular mail" the IDM employee notes the coded numbers on the outside of the envelope; if the envelope is empty, however—and therefore contains no coded preprinted material—the IDM employee writes "LU" on the outside of the envelope as an indication that IDM must "look-up" that partner's records in the computer;
- the amount of any donation noted on the outside of the envelope by the Bank employee is recorded by IDM in a computerized *Partner Record Report* for each partner;
- prayer requests and similar items of "regular mail" requiring further attention by Reverend Tilton or the

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[26] Unlike the Bank, IDM employees are ***not*** paid on a "piece basis." Accordingly, there is no incentive to hurriedly processing the mail items and, at that point, any money or checks in the envelope have already been removed at the Bank.

Church and shipped to Dallas by special courier for Reverend Tilton to pray over;

- prayer requests and similar items of "white mail," ***concerning which the Church has made no promises***, are shipped to the Church in Dallas to be prayed over in the Church Sanctuary by an early moring intercessory prayer group, and summarized in computer generated print-outs and sent to Reverend Tilton for prayer;[27]
- all envelopes—whether regular or white mail—are saved in batches of forty for at least four months in case the partner has any questions about the details reflected on the statement periodically sent to the partner;
- after the retention period, employees of IDM took the envelopes to a commercial company for destruction, and ***none of the envelopes were disposed of at IDM***.[28]

STEP 4: Upon receipt at the Church in Farmers Branch, prayer requests and other necessary regular mail items are delivered to Reverend Tilton to be prayed over, and white mail is prayed over in the Church Sanctuary by an early moring intercessory prayer group, and is also summarized in computer generated print-outs prayed over by Reverend Tilton.

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[27] After Reverend Tilton's deposition in a civil suit brought against him by one of his parishioners following the *PrimeTime Live* broadcasts, Defendants WFAA and Bill Brown misleadingly aired portions of Reverend Tilton's testimony where he explained that he did not personally pray over all prayer requests, *i.e.*, "white mail," as if Reverend Tilton had been speaking about "regular mail."

[28] When the original broadcast aired on November 21, 1991, the Church immediately directed IDM to retain ***all*** envelopes for and indefinite period.

C. The RICO Defendants' Fraudulent Scheme Revealed:

The RICO Defendants knew full-well that the "trash" depicted on the broadcasts consisted of: (1) Church mailings received directly by ABC operatives who had fraudulently placed their names on the Church's mailing lists, and which had never been mailed back to the Church; (2) items obtained from the Church by the RICO Defendants while surreptitiously attending worship services at the Church, and which also were never mailed back in to the Church; (3) "regular mail" and other items stolen by the RICO Defendants from the Bank or IDM; and (4) "white mail" stolen either from the Bank, IDM or the Church.

COMPARISON OF THE ITEMS THE RICO DEFENDANTS CLAIM TO HAVE "FOUND" IN THE TRASH WITH THE ENVELOPE POSTMARKS, THE BANK'S *BATCH CONTROL CARDS*, AND IDM'S *PARTNER RECORD REPORTS* REVEALED THAT *NONE* OF THE IDENTIFIABLE ITEMS THE RICO DEFENDANTS CLAIMED TO HAVE FOUND IN THE TRASH COULD HAVE BEEN FOUND WHERE OR WHEN THE RICO DEFENDANTS CLAIM TO HAVE FOUND THEM. NONE OF THE RICO DEFENDANTS HAVE BEEN ABLE TO PRODUCE SO MUCH AS A SINGLE POSTMARKED ENVELOPE FOR ANY ITEM SHOWN IN THE BROADCASTS AS HAVING BEEN PROCESSED EITHER BY THE BANK OR IDM.

What unraveled the scheme was that—apparently unknown to the RICO defendants—IDM saves every envelope for a period of at least four months. Thus, for each identifiable item of mail "found" by the RICO Defendants, the Church has been able to go back to IDM and compare the postmark on the envelope with the prayer request or letter claimed to have been found. Additionally, the Bank's *Batch Control Card* and IDM's computerized *Partner Record Reports* provided a ready, reliable way of determining when each item of mail was processed, both at the Bank and at IDM.

As detailed in sworn testimony in federal court in Oklahoma and in Mr. Buntz' report, comparison of the envelope postmarks, the Bank *Batch Control Cards*, and the IDM *Partner Record Reports* with the identifiable items the RICO Defendants claim to have "found" revealed that ***none*** of the items the RICO Defendants claimed to have found in the trash could have been found where or when the RICO Defendants claim to have found them. *See* Exhibits 56-58. *See also* Exhibits 42, 43, and 59-61. None of the RICO Defendants have been able to produce so much as a single postmarked envelope for any item shown on the broadcasts as having been processed either by the Bank or IDM.

Particularly revealing are the Casey, McDuffie, and Bray mailings. *See* Exhibits 59-61. In each instance:

- the partner postmarked the mail to the Church in ***June or July***, 1991;
- the *Batch Control Card* revealed that the each of the three items were not processed by the Bank until ***September***;
- the amount of money noted on the outside of the envelope by the Bank employee was significantly less than the partner's normal giving level and less than the amount indicated on the prayer request allegedly "found" in the trash by the RICO Defendants;[29]
- the notations by the Bank employee on each envelope was ***made with the same purple-colored ink***;
- the entries made by IDM in the *Partner Record Report* demonstrate that the envelope was processed by IDM approximately one week after being processed by the Bank, as is customary;
- upon receipt of the items at IDM, each of the envelopes was marked with a "LU," indicating that the envelope was empty upon receipt by IDM; that is, the prayer request allegedly "found" in the trash, and which made its way on *PrimeTime Live*, was not in the envelope when received by IDM.

From this evidence, the conclusion is inescapable that these three items were:

- stolen from the Bank in June and July;
- the contents—including the money and prayer request—was removed; and

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[29] In one of the three cases (Casey), the partner had enclosed $50, but when the envelope was processed through the Bank three months ***after***

- the envelopes were "planted" back in the system by the same Bank employee in September.

Additionally, as the RICO defendants have claimed to have obtained "thousands" of items similar to the Bray, Casey, and McDuffie mailings, and as the average gift to the Church made through the mails between June and September, 1991, was between $20-25 dollars, and given that the amount of money planted back into the system by the Bank employee was, in each instance, substantially less than Bray, Casey, or McDuffie had originally sent to the Church, the conclusion is also inescapable that the RICO Defendants are directly responsible for the theft of tens of thousands of dollars of donations intended for the Church.

D. Other Aspects of the Conspiracy and the Pattern of Racketeering Activity:[30]

- Anthony was first contacted by Sutherland by long distance telephone call in May, 1991, to enlist his involvement in the "investigation.".
- On May 28th, Anthony mailed a letter to Sutherland in furtherance of the conspiracy, explaining the basis for his attacks on televised religious broadcasts. Exhibit 4.
- To obtain much of the mail matter later represented to have been "trashed," numerous ABC operatives placed their names on the Church's mailing lists using false pretenses.
- Several times one or more of the RICO Defendants surreptitiously attended the Church's worship services

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Casey had posted the leter, the envelope only contained 67 cents. Thus, from Casey's mail alone, $49.33 was stolen.

[30] Much of what is outlined below is detailed in the exhibits. Additionally, this is not an exhaustive list of the RICO Defendants' wrongful conduct.

with "undercover" cameras and microphones rolling. On several of the tapes, Gordon and Cooke can be heard to refer to Church employees or "parishioners" as "one of us" or in a manner indicating that they were working in conjunction with Church employees. *E.g.*, Gordon, to Cooke, in reference to a Church employee: "There goes Lee with the garbage."

- On or about August 20, 1991, using false pretenses, Cooke, accompanied by Gordon, applied for employment with the Church. Exhibit 26. This subsequently, reasonably, and forseeably caused the use of interstate telephone communications between the Church and the references listed on the resume by Cooke.
- On August 26, 1991, Gordon, Cooke, and Anthony jointly conducted an "undercover" interview of Response Media president, Jim Moore, using the *Night-Talk* proposal as their "cover."
- Anthony has given sworn deposition testimony that he and the other individual Trinity Defendants acted at the direction of Gordon and ABC, were in constant interstate wire communication with them during some of the alleged "trash sweeps," and that ABC made the decision to "target" Reverend Tilton.
- Gordon's expense reports and other receipts indicate that—contrary to sworn testimony given by Anthony in another civil lawsuit—the expenses of the Trinity Defendants were funded by Gordon and ABC.
- On at least two occasions in October, 1991, under the direction of Gordon, and in active concert and participation with Anthony, an ABC employee (Ellen Levy) and four representatives of the Trinity Foundation, using false pretenses, infiltrated the Church's *Success*

In Life ministry[31] for the purpose of obtaining confidential information or other property of the Church. In doing so, they: (1)engaged in numerous interstate and foreign phone calls with viewers; (2) violated wiretap laws by recording phone conversations being engaged in by other *Success In Life* volunteers who had not consented to the eavesdropping; and (3) at the conclusion of one of the infiltrations stole a number of prayer requests that they had obtained over the phones.

- In the broadcasts, Sawyer consistently says "*we* found" the items in the trash, and on two of the "trash sweeps" the only people allegedly present were Anthony, Guetzlaff, and Holloway. She also gave on-the-air "investigative" credit to Anthony, Gordon, and Sutherland for their participation in the "investigation."
- Expense reports of Gordon and other documents reflect that stolen IDM computer disks were transported in interstate commerce and the data thereon decoded and paid for by ABC.
- Stolen original carbon copies of telephone log books from the law office of the Church's Tulsa attorney, Joyce & Pollard, have surfaced in the hands of attorneys representing the ABC Defendants in federal litigation in Oklahoma. Exhibits 68 and 69.

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[31] At the time, Reverend Tilton was on a crusade to Israel and *Success In Life* operated a phone room where viewers of the Israel pilgramage could phone in prayer requests that would be faxed to Reverend Tilton in Israel.

PART TWO
REQUIRED DELINEATION

As required by the court's March 21, 1994, order, plaintiffs make the following specifications:

1. Sections Violated:

18 U.S.C. §§ 1962 (c) and (d).

2. The Defendants, Alleged Misconduct, And Bases Of Liability:

a. Trinity Foundation, Inc.:

Based on the conduct of Anthony, Guetzlaff, Holloway, Martin, Wilson, the Blains, and other as yet unidentified Does or Trinity Foundation members, employees, or agents, the Trinity Foundation is vicariously liable for violations of 18 U.S.C. §§ 1962(c) and (d). Liability under § 1962(c) is predicated on the participation of these individuals in the conduct of the affairs of Capital Cities/ABC Inc., American Broadcasting Companies, Inc., ABC News, Inc., and the Association Enterprise. Liability under § 1962(d) is predicated on having conspired with the ABC Defendants and the Doe Defendants.

b. Ole Anthony:

For the reasons more fully stated above, and based on the predicate acts and pattern of racketeering activity detailed below, Anthony is directly liable for violations of 18 U.S.C. §§ 1962(c) and (d). Liability under § 1962(c) is predicated on Anthony's direct participation in the conduct of the affairs of the Trinity Foundation, Inc., Capital Cities/ABC Inc., American Broadcasting Companies, Inc., ABC News, Inc., and the Association Enterprise. Liability under § 1962(d) is predicated on Anthony's having conspired with all of the other RICO Defendants.

c. Harry Guetzlaff:

For the reasons more fully stated above, and based on the predicate acts and pattern of racketeering activity detailed below, Guetzlaff is directly liable for violations of 18 U.S.C. §§ 1962(c) and (d). Liability under § 1962(c) is predicated on Guetzlaff's participation in the conduct of the affairs of the Trinity Foundation, Inc., Capital Cities/ABC Inc., American Broadcasting Companies, Inc., ABC News, Inc., and the Association Enterprise. Liability under § 1962(d) is predicated on Guetzlaff's having conspired with all of the other RICO Defendants.

d. Powell Holloway:

For the reasons more fully stated above, and based on the predicate acts and pattern of racketeering activity detailed below, Holloway is directly liable for violations of 18 U.S.C. §§ 1962(c) and (d). Liability under § 1962(c) is predicated on Holloway's participation in the conduct of the affairs of the Trinity Foundation, Inc., Capital Cities/ABC Inc., American Broadcasting Companies, Inc., ABC News, Inc., and the Association Enterprise. Liability under § 1962(d) is predicated on Holloway's having conspired with all of the other RICO Defendants.

e. Diane Sawyer:

For the reasons more fully stated above, and based on the predicate acts and pattern of racketeering activity detailed below, Sawyer is directly liable for violations of 18 U.S.C. §§ 1962(c) and (d). Liability under § 1962(c) is predicated on Sawyer's participation in the conduct of the affairs of the Trinity Foundation, Inc., Capital Cities/ABC Inc., American Broadcasting Companies, Inc., ABC News, Inc., and the Association Enterprise. Liability under § 1962(d) is predicated on Sawyer's having conspired with all of the other RICO Defendants.

f. Roberta ("Robbie") Gordon:

For the reasons more fully stated above, and based on the predicate acts and pattern of racketeering activity detailed below, Gordon is directly liable for violations of 18 U.S.C. §§ 1962(c) and (d). Liability under § 1962(c) is predicated on Gordon's participation in the conduct of the affairs of the Trinity Foundation, Inc., Capital Cities/ABC Inc., American Broadcasting Companies, Inc., ABC News, Inc., and the Association Enterprise. Liability under § 1962(d) is predicated on Gordon's having conspired with all of the other RICO Defendants.

g. Kelly Sutherland:

For the reasons more fully stated above, and based on the predicate acts and pattern of racketeering activity detailed below, Sutherland is directly liable for violations of 18 U.S.C. §§ 1962(c) and (d). Liability under § 1962(c) is predicated on Sutherland's participation in the conduct of the affairs of the Trinity Foundation, Inc., Capital Cities/ABC Inc., American Broadcasting Companies, Inc., ABC News, Inc., and the Association Enterprise. Liability under § 1962(d) is predicated on Sutherland's having conspired with all of the other RICO Defendants.

h. Jeff Cooke:

For the reasons more fully stated above, and based on the predicate acts and pattern of racketeering activity detailed below, Cooke is directly liable for violations of 18 U.S.C. §§ 1962(c) and (d). Liability under § 1962(c) is predicated on Cooke's participation in the conduct of the affairs of the Trinity Foundation, Inc., Capital Cities/ABC Inc., American Broadcasting Companies, Inc., ABC News, Inc., and the Association Enterprise. Liability under § 1962(d) is predicated on Cooke's having conspired with all of the other RICO Defendants.

i. Capital Cities/ABC Inc.:

Based on the conduct of Sawyer, Gordon, Sutherland, Cooke, Levy and the Doe Defendants, the Capital Cities/ABC, Inc., is vicariously liable for violations of 18 U.S.C. §§ 1962(c) and (d). Liability under § 1962(c) is predicated on Capital Cities/ABC, Inc.'s participation in the conduct of the affairs of the Trinity Foundation, Inc., the Bank, IDM, the Church, Joyce & Pollard, American Broadcasting Companies, Inc., ABC News, Inc., and the Association Enterprise. Liability under § 1962(d) is predicated on Capital Cities/ABC, Inc.'s having conspired with all of the Trinity Defendants and the Doe Defendants.[32]

j. American Broadcasting Companies, Inc.:

Based on the conduct of Sawyer, Gordon, Sutherland, Cooke, Levy and the Doe Defendants, the American Broadcasting Companies, Inc., is vicariously liable for violations of 18 U.S.C. §§ 1962(c) and (d). Liability under § 1962(c) is predicated on American Broadcasting Companies, Inc.'s participation in the conduct of the affairs of the Trinity Foundation, Inc., the Bank, IDM, the Church, Joyce & Pollard, Capital Cities/ABC, Inc., ABC News, Inc., and the Association Enterprise. Liability under § 1962(d) is predicated on American Broadcasting Companies, Inc.'s having conspired with all of the Trinity Defendants and the Doe Defendants.

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[32] In related litigation, the corporate ABC entities have improperly resisted disclosing the identity of operatives who participated in some of the predicate acts specified below and have, without lawful excuse or authority, redacted incriminating evidence from discoverable documents and video tapes in an attempt to conceal the racketeering activity of its agents, employees, and coconspirators. Accordingly, the court is reasonably entitled to infer that the corporate ABC entities joined in the racketeering activity while the conspiracy alleged herein was still in operation. *See Cox v. Administrator United States Steel & Carnegie*, 17 F.3d 1386 (11th Cir. 1994).

k. ABC News, Inc.:

Based on the conduct of Sawyer, Gordon, Sutherland, Cooke, Levy and the Doe Defendants, the ABC News, Inc., is vicariously liable for violations of 18 U.S.C. §§ 1962(c) and (d). Liability under § 1962(c) is predicated on ABC News, Inc.'s participation in the conduct of the affairs of the Trinity Foundation, Inc., the Bank, IDM, the Church, Joyce & Pollard, Capital Cities/ABC, Inc., American Broadcasting Companies, Inc., and the Association Enterprise. Liability under § 1962(d) is predicated on ABC News, Inc.'s having conspired with all of the Trinity Defendants and the Doe Defendants.

l. The Doe Defendants:

For the reasons more fully stated above, and based on the predicate acts and pattern of racketeering activity detailed below, The Doe Defendants are directly liable for violations of 18 U.S.C. §§ 1962(c) and (d). Liability under § 1962(c) is predicated on the Doe Defendants' participation in the conduct of the affairs of the Trinity Foundation, Inc., the Bank, IDM, the Church, Joyce & Pollard, Capital Cities/ABC Inc., American Broadcasting Companies, Inc., ABC News, Inc., and the Association Enterprise. Liability under § 1962(d) is predicated on The Doe Defendants' having conspired with all of the other RICO Defendants.

3. Other Wrongdoers:

As is more fully described in the predicate acts section below, Ellen Levy, an ABC employee, and Barbara Wilson, Gary Martin, Derell Blain, and September Blain—all affiliated with the Trinity Foundation—each directly participated in one or more wire fraud, and conspired with each other and with Gordon and Anthony to do so.

4. Victim And Injury:

a. The Church, Its Pastor, Its Members, Its Employees, and Its Ministry:

The Church, its pastor, its members, and the Church's ministries have been subjected to public scorn and derision, subjected to numerous investigations by local, state, and federal authorities—some of which have violated the constitutional rights of the Church and its members, the Church's television ministry has been forced to close resulting in the loss of employment and financial hardship ***for approximately 800 Church employees and their families***, and the Church's membership and outreach ministries have been significantly reduced. The Church and its members were also injured as a result of the RICO defendants falsely and fraudulently obtaining confidential and constitutionally protected information concerning the Church and its members. Economically, the loss is at least $50,000,000. Spiritually, it is immeasurable.

Additionally, the Church was deprived of the honest and loyal services of one or more of its employees—the WOF Does, within the meaning of 18 U.S.C. § 1346.

Additionally, the Church was deprived of donations, prayer requests, mail matter and other property intended for the Church.

b. Commercial Bank & Trust Co. of Tulsa:

Commercial Bank & Trust Co. of Tulsa, a federally insured institution, was deprived of the honest and loyal services of one or more of its employees—the Bank Does, within the meaning of 18 U.S.C. § 1346.

c. IDM:

IDM, was deprived of the honest and loyal services of one or more of its employees—the IDM Does, within the meaning of 18 U.S.C. § 1346.

d. Joyce & Pollard:

Joyce & Pollard, was deprived of the honest and loyal services of one or more of its employees—the Joyce-Pollard Does, within the meaning of 18 U.S.C. § 1346.

e. ABC Advertisers:

Advertisers advertising their products and services during *PrimeTime Live* broadcasts airing on and after November 21, 1991, were defrauded of advertising revenues because of artificially inflated ratings.

5. The Pattern Of Racketeering Activity:

a. Predicate Acts:[33]

1) Wire Fraud, 18 U.S.C. § 1343 (unknown date, call from ABC to Wheymeyer):

On an unknown date, believed to have been in or around May, 1991, a presently unknown employee, agent, or other representative of the ABC Defendants placed an interstate telephone call to Peggy Wheymeyer. *See* Exhibit 6.

2) Wire Fraud, 18 U.S.C. § 1343 (May, 1991, call from Sutherland to Anthony):

In or about May, 1991, Sutherland placed an interstate telephone call to Anthony.

3) Mail Fraud, 18 U.S.C. § 134I (05/28/91 Anthony letter to Sutherland):

On or about May 28, 1991, in or around Dallas, Texas, Anthony deposited Exhibit 4 with the U.S. Postal Service, addressed to Sutherland.

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[33] Each mail, wire, and bank fraud specified below was committed in furtherance of the scheme and artifice to defraud specified in ¶ 5(b), below, and as an overt act in furtherance of the conspiracy alleged herein.

4) Mail Fraud, 18 U.S.C. § 134I (05/28/91 Anthony letter to Sutherland):

On or about May 28, 1991, in New York, New York, Sutherland, or someone acting on her behalf, took or received Exhibit 4 from the U.S. Postal Service.

5) Mail Fraud, 18 U.S.C. § 1341 (direct mailings):

At divers times between in or about May and November 21, 1991, acting at the behest and on behalf of the ABC Defendants, numerous presently unknown persons, sometimes using false pretenses, *e.g.*, fictitious names or pseudonyms (including a cat "Walker Railey Bailey"), caused numerous items to be deposited in the U.S. mails, including, without limitation, the items depicted in Exhibit 71.

6) Bank Fraud, 18 U.S.C. § 1344:

On divers times from at least June 10, 1991, through on or about September 14, 1991, in Tulsa, Oklahoma, acting on behalf of one or more of the other RICO defendants, one or more Bank Does executed, or attempted to execute, a scheme or artifice to defraud the Bank, a federally insured institution, of the honest and loyal services of one or more of its agents or employees within the meaning of 18 U.S.C. § 1346 by stealing various items, property of the Church moving in interstate commerce and that were in the possession custody and control of the Bank, including, *inter alia*, the Newell, Bray, McDuffie, Casey, Leon, Lowry, and Perez mailings.

7) Mail Fraud, 18 U.S.C. § 134I (taking the Casey letter from the mail):

On or about June 10, 1991, in Tulsa, Oklahoma, acting on behalf of one or more of the other RICO defendants, one or more Bank Does took from the mails mail matter addressed to the Church from Wilfred Casey, including a prayer request and a $50 contribution intended for the Church.

8) Mail Fraud, 18 U.S.C. § 1341 (taking the Bray letter from the mail):

On or about June 12, 1991, in Tulsa, Oklahoma, acting on behalf of one or more of the other RICO defendants, one or more Bank Does took from the mails mail matter addressed to the Church from David Bray, including a prayer request and a $100 contribution intended for the Church.

9) Mail Fraud, 18 U.S.C. § 1341 (taking the McDuffie letter from the mail):

On or about July 12, 1991, in Tulsa, Oklahoma, acting on behalf of one or more of the other RICO defendants, one or more Bank Does took from the mails mail matter addressed to the Church from Matilda McDuffie, including a prayer request and a $100 contribution intended for the Church.

10) Mail Fraud, 18 U.S.C. § 1341 (taking the Lowry letter from the mail):

Sometime between August 28, 1991, and September 14, 1991, either in Dallas, Texas, or in Tulsa, Oklahoma, acting on behalf of one or more of the other RICO defendants, one or more WOF Does or Bank Does took from the mails mail matter addressed to the Church from Barbara Lowry, including a letter and photographs intended for the Church.

11) Mail Fraud, 18 U.S.C. § 1341 (taking the Leon letter from the mail):

Sometime between August 27, 1991, and September 14, 1991, either in Dallas, Texas, or in Tulsa, Oklahoma, acting on behalf of one or more of the other RICO defendants, one or more WOF Does or Bank Does took from the mails mail matter addressed to the Church from Irma F. Leon, including a letter intended for the Church.

12) Mail Fraud, 18 U.S.C. § 1341 (taking the Perez letter from the mail):

Sometime between August, 1991, and September 14, 1991, either in Dallas, Texas, or in Tulsa, Oklahoma, acting on behalf of one or more of the other RICO defendants, one or

more WOF Does or Bank Does took from the mails mail matter addressed to the Church from Maria A. Perez, including a letter intended for the Church.

13) Wire Fraud, 18 U.S.C. § 1343 (relating to "trash sweep A"):

At divers times between September 9 and September 12, 1991, Anthony and Gordon caused numerous transmissions of sounds and signals by means of wire in interstate commerce by engaging in numerous telephone and mobile telephone calls between Tulsa, Oklahoma (where Anthony claims he was located), and other states or district, presumably New York or Washington, D.C.

14) Wire Fraud, 18 U.S.C. § 1343 (relating to Cooke's scheme to obtain employment with the Church under false pretenses; the California call):

On or about September 20, 1991, as a direct and foreseeable result of Cooke's and Gordon's efforts on or about August 20, 1991, to obtain property, wages, and confidential and constitutionally privileged information from the Church by means of false and fraudulent pretenses and representations, Cooke and Gordon caused sounds and signals to be sent by wire in interstate commerce from Dallas, Texas, to California. *See* attachments to Exhibit 26.

15) Wire Fraud, 18 U.S.C. § 1343 (relating to Cooke's scheme to obtain employment with the Church under false pretenses; the Florida call):

On or about September 20, 1991, as a direct and foreseeable result of Cooke's and Gordon's efforts on or about August 20, 1991, to obtain property, wages, and confidential and constitutionally privileged information from the Church by means of false and fraudulent pretenses and representations, Cooke and Gordon caused sounds and signals to be sent by wire in interstate commerce from Dallas, Texas, to Florida. *See* attachments to Exhibit 26.

16) Interstate Transportation of Stolen Goods, 18 U.S.C. éß 2314 (the computer disks):

On or about October 5, 1991, Gordon, either as a principal or as an aider and abettor to persons presently unknown,, transported in interstate commerce from Tulsa, Oklahoma, to Washington, D.C., and/or to New York, New York, computer data disks and the data thereon, property of IDM and the Church and reasonably believed to be of a value in excess of $5,000, knowing the same to have been stolen. *See* Exhibits 18 and 35.

17) Receipt of Property Stolen from Interstate Commerce, 18 U.S.C. § 2315 (the computer disks):

On or about October 5, 1991, Gordon received, concealed, and/or disposed of computer data disks and the data thereon, property of IDM and the Church and reasonably believed to be of a value in excess of $5,000. moving as or as a part of interstate commerce, knowing the same to have been stolen, unlawfully converted or taken. *See* Exhibits 18 and 35.

18) Mail Fraud, 18 U.S.C. § 134I (the ImageTech invoice):

On or about October 5, 1991, Gordon caused an invoice from ImageTech, Inc., to be placed in the U.S. Postal Service. *See* Exhibit 35.

19) Mail Fraud, 18 U.S.C. § 134I (Gordon's check to ImageTech):

On or about October 19, 1991, Gordon caused her personal check to ImageTech, Inc., to be placed in the U.S. Postal Service. *See* Exhibit 35.

20) Multiple Wire Frauds, 18 U.S.C. § 1343 (the Success in Life Infiltration):

On at least two occasions in Texas in or about October, 1991, at the behest of Gordon, and in active concert and participation with Anthony, and in furtherance of a scheme or

artifice to obtain prayer requests, confidential and constitutionally protected information and other property of the Church through false or fraudulent pretenses and representations, ABC employee Barbara Levy, Trinity Foundation member Barbara Wilson, Gary Martin, Derell Blain, and September Blain gained entry to the Church's *Success in Life* and transmitted sounds and signals, or caused sounds and signals to be transmitted, by means of wire in interstate and foreign commerce. As depicted in Exhibits 28 and 29, these operatives of the RICO Defendants participated in numerous interstate and, in some cases, foreign (Canada) telephone conversations with persons calling *Success in Life*. These include, but are not limited to:

A phone conversation between Ellen Levy and an individual named Besmukh (?) from Montreal, Canada;

A phone conversation between Ellen Levy and an individual named August Johnson from Baton Rouge, Louisiana; and

A phone conversation between Ellen Levy and an individual named Melva Baker from Los Angeles, California.

21) Wire Fraud, 18 U.S.C. § 1343 (the Lodge fax to Gordon):

On or about November 19, 1991, Gordon caused Bill Lodge to send her an interstate fax transmission. *See* Exhibit 30.

22) Wire Fraud, 18 U.S.C. § 1343 (the Brewton fax to Gordon):

On or about November 19, 1991, Gordon caused Pete Brewton to send her an interstate fax transmission. *See* Exhibit 30.

23) Wire Fraud, 18 U.S.C. § 1343 (the November 21, 1991 broadcast):

On November 21, 1991, the ABC Defendants broadcast *PrimeTime Live* by means of interstate television transmis-

- That "holy water" sent by the Church to its followers came from Taiwan, not the River Jordan.[40]
- *"Moore said some of the items come from that holy place, Taiwan."*[41]
- "The letters accompanying the items ***are written by ghost writers to pressure followers*** to write back and make donations, too."[42]
- *"And when the letters arrive, they're processed so the company knows which fund-raising appeals you can use to squeeze followers for the most donations."*[43]
- *"But we tracked down every charitable contribution of Tilton's we could find and we calculate he spends more in a year on billboards around Dallas than he does on all of these missions combined."*

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[39] Neither Anthony, Gordon, or Cooke ever asked Moore this question. Additionally, instead of a "big money ministry," the trio of infiltrators sought help in promoting Anthony's and the Trinity Foundation's plans for a nationally syndicated radio and television show, *Night-Talk*.

[40] Neither the Holy Water, nor any other item included in mailings from the Church, came from Tiawan, and Gordon, Cooke, and Anthony clearly knew it (Exhibit 15):

> Gordon: I really wanted to get him to say that ***stuff*** is not from the River Jordan, but I think that's (inaudible).
>
> Anthony: Yeah, I know, I know. I did too, but I thought it would become too obvious. . . .

[41] Moore never stated that any of ***the Church's*** items come from Tiawan.

[42] Response Media is used by the Church strictly as a printer. The Church creates its own mailings.

[43] In fact, none of the Church's mail is processed by Response Media. Response Media is strictly a printing company. Further, the Bank and IDM process the mail so that the Church can maintain accurate financial records for budgetary, tax, and auditing purposes, not only for itself, but for its followers.

- That the Church does not financially support orphanages in Haiti.
- *"And Tilton's marketing director made it clear, when it comes to money for missions, Tilton is very smart. He's careful to say what donation goes where so he can avoid, again, how Jim and Tammy got caught."*[44]
- "But he never tells followers ***how he and his friends talked about running preacher scams and cashing in.***"[45]
- "That was 1974, when Tilton started out. And by 1981, he had hit the big time. How: PrimeTime has learned that for several years, ***Tilton courted a man***

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[44] Moore is not "marketing director" for the Church. Response Media is used solely as a printer. Additionally, the statement is grossly misleading to a listener of ordinary intelligence because it conveys, and was intended to convey, an impression of dishonesty—"the sleaze factor" as Anthony had plotted "off camera" with Sawyer. In fact, immediately following the statement attributed to Moore, Moore went on to state: "Bob is cleaner than anyone out there. He comes against a lot of heat, but he's the cleanest one I've worked with. I mean, everything down to the wire. He takes no perks for anything. He--a lot of people-- the IRS has come down on a lot of people for different type of allowances that they've made. Oral [Roberts] for instance got in trouble for like plane usage. If it's not business, then you've got to deduct it personally. You can get in trouble two ways, one personally, and you can lose your non-profit status." Moore also specifically told the trio that he and his company would never work with a client that was not above board. The public never heard any of ***that*** on *PrimeTime Live*.

Further, the knowing falsity of the representations made on the broadcast is evident by Gordon's own admissions, made to Cooke and Anthony while leaving Response Media, that she wasn't sure there was enough to "get" Reverend Tilton, but she would have to check the wording captured on the tape before deciding.

[45] The statement is, simply, false and was intentionally made to create and convey an imputation of fraud and/or criminality when ABC's own internal documents demonstrated full knowledge that there was "no fraud on this guy - can have fun with him though".

news accounts have tied to organized crime and drug smuggling, Herman Beebe, a financier whose banks ***gave Tilton a $1.3 million loan, though Tilton claims he never met the man***. And after Tilton got the money, he got a new image, too—a permanent wave for his hair, plastic surgery and, ***like his good buddy Jim Bakker***, a talent for ***tears on demand***."[46]

- The entire portion of the program involving the discussions with Hardy and Montcalm convey a false and misleading impression concerning the sincerety of the Church's ministry and was intentionally so because the ABC Defendants know from their own surreptitious infiltration of *Success In Life* on at least two occasions that: (1) the persons initially answering the phones were not, nor were represented to be, "prayer ministers;" (2) whenever a caller wanted to pray over the phone, the answerer would connect the caller with a prayer minister, who ***was*** specially trained; (3) no donations were solicited over the phone;[47] (4) persons answering the phones were not pressured to quickly end any call (except one from an obscene caller); and (5) callers were expressly informed that Reverend Tilton was at the time in Israel and their prayer requests would be faxed to him.

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[46] First, the reference to Beebe, organized crime and drug smuggling, following as it does by less than 30 seconds, Sawyer's statement, "Tilton . . . ***admits*** he was a drug user, but ***says*** he was saved when some people came to his house and explained Christ," is clearly intended to convey a false and misleading impression of criminality where none exists. Second, the references to the loan are likewise intended to convey a false and misleading message of fraud where none exists. Finally, the reference—and a false one at that—to "***good buddy***" Bakker, who had, by then, been convicted and incarcerated for fraud, was likewise so intended.

[47] As Ellen Levy herself acknowledged—on tape—while infiltrating *Success In Life* on or about October 26, 1991: "Prayers don't cost money. We're taking prayer requests for Pastor Bob while he is in Israel."

- ***"Tilton has organized his ministry as a sole proprietorship . . . [and has] $60 million in assets available to Tilton. And those are the ones he puts on the list."***[48]

- ***"And those items that people have prayed over and sent in, believing Robert Tilton would take them and pray over them too? If some make it to Tilton, there are thousands that didn't. We found them in the garbage at the bank [and] in the marketing research center. The 'angels of God,' the prayer cords, the arrows—this person wanted his aimed at getting a real dad—the tracing where Tilton said he'd place his hand, ripped up by the bank. We found heartbreaking appeals from followers and letters like this one. It came with a $7,000 pledge. The money probably made it to Tilton. The prayers went into the trash."***[49]

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[48] WOF, Inc., was a tax exempt non-profit corporation formed under and in accordance with Texas law. Accordingly, Tilton did not have personal access to the assets of the Church. The latter statement falsely and misleadingly insinuates that Reverend Tilton had secreted away millions more. Indeed, Sawyer coconspirator and fellow racketeer Anthony later called a press conference in which he falsely accused Reverend Tilton of secreting substantial sums of cash in offshore accounts.

[49] First, none of the material depicted was found in the trash. It was all: (1) Church mailings received directly by ABC operatives who had fraudulently placed their names on the Church's mailing lists, and which had never been mailed back to the Church; (2) items obtained from the Church by the RICO Defendants while surreptitiously attending worship services at the Church, and which also were never mailed back in to the Church; (3) "regular mail" and other items stolen by the RICO Defendants from the bank and data processing company which initially processed the Church's mail; and (4) "white mail" stolen from the either a bank or the Church. Second, plain evidence of the knowing falsity of the representations is demonstrated by the fact that the program visually represented the dumpster outside the Bank's main office as the location of the "finds," when, in fact, the main Bank office did not handle the Church's mail, a

- Finally, by making the segment on Reverend Tilton the climax of a show that first featured two exposés concerning other television ministers—"[Tilton] heads the fastest-growing ministry on television today. . . . He parlays all of it into a high-tech church in Dallas and more air time than almost any other televangelist. . . . Tilton takes in so much money, he makes other TV ministers look like amatuers."[50]

24) Wire Fraud, 18 U.S.C. § 1343 (the November 28, 1991 broadcast):

On November 28, 1991, the ABC Defendants broadcast *PrimeTime Live* by means of interstate television transmission. In the transmission, the following false, fraudulent, or misleading statements or representations, with accompanying false, fraudulent, or misleading visual images, were knowingly, willfully, and maliciously made by Sawyer, in active concert and participation with Gordon, Sutherland, Cooke, Levy and other presently unidentified ABC employees (emphasis on portion that is false, fraudulent, or misleading), *inter alia*:

- "We showed you documents indicating his followers send in at least $80 million dollars a year, tax free.

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branch office did. Third, the ABC Defendants knew full well that the Barbara Lowry letter did not contain ***any*** money, merely a ***pledge*** of $7,000. Fourth, the inference that the Church would callously discard Ms. Lowry's ***pledge*** of $7,000 is totally inconsistent with the image of a "big money ministry." Why would a "big money ministry" throw away a ***pledge*** instead of recording it and then "squeezing" the pledger to pay up? Fifth, much of the material depicted and represented as having been found in the trash consisted of "white mail," which is unsolicited mail concerning which neither Reverend Tilton nor the Church has made any representations concerning its handling or disposition.

[50] Unstated but clearly the intent to convey the additional comment: "Including the two frauds we've just told you about." Indeed, later in the broadcast, without factual support, Sawyer expressly tried to connect Tilton with one of the earlier segments.

We told you about his $1.5 million in cash and cd's., ***his access to $14,000,000 in treasury bills, the $40 million in ministry real estate*** . . . ."

- "We had shown you how ***prayer requests sent to Tilton, those heartbreaking appeals from people who are sick or in need, go instead straight to his bank so the bank can get the money***."
- "But if Tilton says he prays over all those requests, what accounts ***for the thousands found in the garbage.***"
- ***"But we didn't plant the garbage. We didn't steal it. In fact, what we showed is what we found not just once, but on fourteen separate occasions in a one month period."***
- "But we talked to some of the people ***whose letters were in the trash."***

25) Interstate Transportation of Stolen Goods, 18 U.S.C. § 2314 (Anthony's "excess baggage"):

On or about December 5, 1991, Gordon and Anthony, transported or caused to be transported in interstate commerce from Tulsa, Oklahoma, to Washington, D.C., and/or to New York, New York, six boxes of materials, reasonably believed to be of a value in excess of $5,000, knowing the same to have been stolen. *See* Exhibits 36 through 41.

26) Receipt of Property Stolen from Interstate Commerce, 18 U.S.C. § 2315 (Anthony's "excess baggage"):

On or about December 5, 1991, Gordon received, concealed, and/or disposed of six boxes of material, reasonably believed to be of a value in excess of $5,000. moving as or as a part of interstate commerce, knowing the same to have been stolen, unlawfully converted or taken. *See* Exhibits 36 through 41.

27) Wire Fraud, 18 U.S.C. § 1343 (the June, 1992, call from Sawyer to Cohn):

In or about June, 1992, Sawyer placed an interstate telephone call to Connie Conn.

28) Wire Fraud, 18 U.S.C. § 1343 (the July 9, 1992, broadcast):

On July 9, 1992, the ABC Defendants broadcast *Prime-Time Live* by means of interstate television transmission. In the transmission, the same, or substantially the same, false, fraudulent and misleading statements or representations as had been made in the November 21 and November 28, 1991, broadcasts were knowingly, willfully, and maliciously made again by Sawyer, in active concert and participation with Gordon, Sutherland, Cooke, Levy and other presently unidentified ABC employees. Additionally, the broadcast falsely represented that during a crusade to India, Reverend Tilton had taken up a collection from the crowd—"the poorest of the poor"—when, in fact, as the ABC Defendants knew, or should have known: (1) Reverend Tilton did not receive the money being collected; it was distributed to Indian ministers for their ministry and for food; (2) it is illegal to take money out of India; and (3) contrary to the videotape and voice-over in the broadcast—which depicted the collection being taken ***while*** Reverend Tilton was preaching—ABC's out-takes clearly demonstrate that Reverend Tilton ***was not*** preaching during the collection, and, in fact, the collection was taken when Indian ministers were preaching.

29) Mail Frauds, 18 U.S.C. § 1341 (the Trinity Foundation Rebuttal):

On or about September 24, 1992, Anthony deposited, or caused to be deposited, in the mails approximately 142 separate copies of Exhibit 49.

30) Obstruction of Justice, 18 U.S.C. § 1503 (Anthony affidavit):

On or about June 8, 1993, after having previously given sworn deposition testimony concerning the accuracy of the

Tilton Evidence Log, Anthony, at the request of attorneys for ABC, signed an affidavit in *Tilton v. Capital Cities/ABC, Inc.*, before the United States District Court for the N. D. of Oklahoma, in which he falsely recanted his prior testimony.[51]

31) Obstruction of Justice, 18 U.S.C. § 1503 (Guetzlaff affidavit):

On or about June 8, 1993, after having previously given sworn deposition testimony concerning the accuracy of the *Tilton Evidence Log*, Guetzlaff, at the request of attorneys for ABC, signed an affidavit in *Tilton v. Capital Cities/ABC, Inc.*, before the United States District Court for the N. D. of Oklahoma, in which he falsely recanted his prior testimony.[52]

32) Obstruction of Justice, 18 U.S.C. § 1503 (Holloway affidavit):

On or about June 8, 1993, after having previously given sworn deposition testimony concerning the accuracy of the *Tilton Evidence Log*, Holloway, at the request of attorneys for ABC, signed an affidavit in *Tilton v. Capital Cities/ABC, Inc.*, before the United States District Court for the N. D. of Oklahoma, in which he falsely recanted his prior testimony.[53]

b. Circumstances of the Mail, Wire, and Bank Frauds:

As is more fully described both in *Part One*, and as is also detailed in connection with specific predicate acts of mail, wire, and bank fraud contained in ¶ 5(a) above, the scheme or artifice to defraud—motivated both by religious bigotry and by personal and professional greed and ambition, including a desire to fraudulently increase the ratings of *PrimeTime Live* and the resulting corporate profits—included:

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[51] Nothing in this allegation is intended to suggest that the ABC attorneys themselves knowingly participated in the criminal act alleged.

[52] Nothing in this allegation is intended to suggest that the ABC attorneys themselves knowingly participated in the criminal act alleged.

[53] Nothing in this allegation is intended to suggest that the ABC attorneys themselves knowingly participated in the criminal act alleged.

1) a scheme whereby the RICO Defendants, in active concert and participation with each other, would maliciously create, publish, circulate and nationally broadcast "news" stories about the Church and its pastor that they knew to be false and fraudulent and based on "evidence" fraudulently and illegally manufactured by the RICO Defendants;

2) a scheme to defraud the Bank of the honest and loyal services of one or more of its employees within the meaning of 18 U.S.C. § 1346 by, inter alia, enlisting the cooperation of one or more Bank Does—through means at present unknown, e.g., perhaps bribery or extortion, to steal mail, money, prayer requests and other property in the custody of the Bank and moving as part of interstate commerce;

3) a scheme to defraud IDM of the honest and loyal services of one or more of its employees within the meaning of 18 U.S.C. § 1346 by, inter alia, enlisting the cooperation of one or more IDM Does—through means at present unknown, e.g., perhaps bribery or extortion, to steal prayer requests and other property in the custody of IDM and moving as part of interstate commerce;

4) a scheme to defraud the Church of the honest and loyal services of one or more of its employees within the meaning of 18 U.S.C. § 1346 by, inter alia, enlisting the cooperation of one or more WOF Does—through means at present unknown, e.g., perhaps bribery or extortion, to steal "white mail" and other property of the Church;

5) a scheme or artifice to obtain prayer requests, wages, confidential and constitutionally protected information concerning the Church and its

members, and other property and information of the Church by means of false or fraudulent pretenses and representations, including, inter alia, infiltration of Success in Life by operatives of the defendants and infiltration of the Church by seeking employment with the Church under false pretenses;

6) a scheme to defraud Joyce & Pollard of the honest and loyal services of one or more of its employees within the meaning of 18 U.S.C. § 1346 by, inter alia, enlisting the cooperation of one or more Joyce-Pollard Does—through means at present unknown, e.g., perhaps bribery or extortion, to steal confidential attorney-client communications, documents protected by the attorney work-product privilege, and other records and property of Joyce & Pollard or the Church that was in the custody of Joyce & Pollard.

c. Criminal Convictions:

There have been no criminal convictions to date.

d. Civil Litigation:

There have been no civil judgments to date.

e. The "Pattern of Racketeering Activity" Formed by the Predicate Acts:

Each of the predicate acts listed in ¶ 5(a) above were inextricably linked to the RICO Defendants' motives to shut down the Church, personally and professionally profit, and execute, or attempt to execute, the schemes and artifices detailed in ¶ 5(b) above. They, and other criminal acts not themselves predicate acts under § 1961, *e.g.*, theft, wiretapping violations, *etc.*, demonstrate a concerted course of conduct to accomplish the RICO Defendants' objectives.

f. Relationship of the Predicate Acts to Each Other As Part of a Common Plan:

Each of the predicate acts listed in ¶ 5(a) above were inextricably linked to the RICO Defendants' motives to shut down the Church, personally and professionally profit, and execute, or attempt to execute, the schemes and artifices detailed in ¶ 5(b) above.[54] They, and other criminal acts not themselves predicate acts under § 1961, *e.g.*, theft, wiretapping violations, *etc.*, demonstrate a concerted course of conduct to accomplish the RICO Defendants' objectives.

6. The Enterprise(s):

a. The Trinity Foundation, Inc.:

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise:

The Trinity Foundation is a Texas non-profit corporation, founded by Anthony January 12, 1973. Exhibit 1. It purports to have been formed for the purpose of (*id.*):

> . . . promoting the public interest in the State of Texas by organizing, designing, producing, presenting, operating, and supporting Christ-centered communications projects, including radio and television programs and presentations, movies and film productions, and in general all types of communications which will convey the love of Christ to the general public.

The foundation occupies several houses and condominiums in Dallas, Texas, where it houses a small community of believers in a communal living arrangement.

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[54] For example, the bank and mail frauds committed in connection with stealing the mail in the custody of the Bank provided the "evidence" necessary for the wire frauds committed in the three *PrimeTime Live* broadcasts.

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise:

At all relevant times in connection with this litigation, Anthony was President and a member of the Board of Directors, Holloway was the Director of Development, Guetzlaff and Wilson were employees, and Martin was on the Board of Directors.

3) Defendants Associated with the Enterprise:

At all relevant times in connection with this litigation, if not employees, Derell and September Blain were associated with the foundation.

At all relevant times in connection with this litigation, Sawyer, Gordon, Sutherland, Cooke, Levy, Capital Cities/ABC, Inc., American Broadcasting Companies, Inc., and ABC News, Inc., were associated with the foundation.

At all relevant times in connection with this litigation, one or more of the WOF Does likely were associated with the foundation.

4) Relationship Between the Defendants and the Enterprise:

At all relevant times in connection with this litigation, each person and entity listed in the preceding two paragraphs are "persons" separate and apart from the Trinity Foundation as an "enterprise" and participated in the conduct of the affairs of the Trinity Foundation through the pattern of racketeering activity alleged herein.

5) Status and Culpability of the Defendants in Relation to the Enterprise:

The Trinity Foundation, through the acts of those employed by or associated with it, was an active perpetrator of the alleged racketeering activity.

b. Capital Cities/ABC, Inc.:

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise:

At all relevant times in connection with this litigation, Capital Cities/ABC, Inc., was a New York corporation engaged in broadcasting in interstate or foreign commerce.

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise:

At all relevant times in connection with this litigation, Sawyer, Gordon, Sutherland, Cooke, and Levy were either employed by or associated with Capital Cities/ABC, Inc.

At all relevant times in connection with this litigation, one or more of the Church Does, the Bank Does, the IDM Does, and the Joyce-Pollard Does were either employed by or associated with Capital Cities/ABC, Inc.

3) Defendants Associated with the Enterprise:

At all relevant times in connection with this litigation, Sawyer, Gordon, Sutherland, Cooke, and Levy were either employed by or associated with Capital Cities/ABC, Inc.

At all relevant times in connection with this litigation, one or more of the Church Does, the Bank Does, the IDM Does, and the Joyce-Pollard Does were either employed by or associated with Capital Cities/ABC, Inc.

At all relevant times in connection with this litigation, the Trinity Defendants, Wilson, Martin, and the Blains were associated with Capital Cities/ABC, Inc.

At all relevant times in connection with this litigation, American Broadcasting Companies, Inc., and ABC News, Inc., were associated with Capital Cities/ABC, Inc.

4) Relationship Between the Defendants and the Enterprise:

At all relevant times in connection with this litigation, each person and entity listed in the preceding two paragraphs were "persons" separate and apart from Capital Cities/ABC, Inc., as an "enterprise" and participated in the conduct of the affairs of Capital Cities/ABC, Inc., through the pattern of racketeering activity alleged herein.

5) Status and Culpability of the Defendants in Relation to the Enterprise:

Capital Cities/ABC, Inc., through the acts of those employed by or associated with it, was an active perpetrator of the alleged racketeering activity.

c. American Broadcasting Companies, Inc.:

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise:

American Broadcasting Companies, Inc., is a Delaware corporation engaged in broadcasting in interstate or foreign commerce.

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise:

At all relevant times in connection with this litigation, Sawyer, Gordon, Sutherland, Cooke, and Levy were either employed by or associated with American Broadcasting Companies, Inc.

At all relevant times in connection with this litigation, one or more of the Church Does, the Bank Does, the IDM Does, and the Joyce-Pollard Does were either employed by or associated with American Broadcasting Companies, Inc.

3) Defendants Associated with the Enterprise:

At all relevant times in connection with this litigation, Sawyer, Gordon, Sutherland, Cooke, and Levy were either employed by or associated with American Broadcasting Companies, Inc.

At all relevant times in connection with this litigation, one or more of the Church Does, the Bank Does, the IDM Does, and the Joyce-Pollard Does were either employed by or associated with American Broadcasting Companies, Inc.

At all relevant times in connection with this litigation, the Trinity Defendants, Wilson, Martin, and the Blains were associated with American Broadcasting Companies, Inc.

At all relevant times in connection with this litigation, Capital Cities/ABC, Inc., and ABC News, Inc., were associated with American Broadcasting Companies, Inc.

4) Relationship Between the Defendants and the Enterprise:

At all relevant times in connection with this litigation, each person and entity listed in the preceding two paragraphs were "persons" separate and apart from American Broadcasting Companies, Inc., as an "enterprise" and participated in the conduct of the affairs of American Broadcasting Companies, Inc., through the pattern of racketeering activity alleged herein.

5) Status and Culpability of the Defendants in Relation to the Enterprise:

American Broadcasting Companies, Inc., through the acts of those employed by or associated with it, was an active perpetrator of the alleged racketeering activity.

d. ABC News, Inc.:

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise:

ABC News, Inc., is a Delaware corporation engaged in broadcasting in interstate or foreign commerce.

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise:

At all relevant times in connection with this litigation, Sawyer, Gordon, Sutherland, Cooke, and Levy were either employed by or associated with ABC News, Inc.

At all relevant times in connection with this litigation, one or more of the Church Does, the Bank Does, the IDM Does, and the Joyce-Pollard Does were either employed by or associated with ABC News, Inc.

3) Defendants Associated with the Enterprise:

At all relevant times in connection with this litigation, Sawyer, Gordon, Sutherland, Cooke, and Levy were either employed by or associated with ABC News, Inc.

At all relevant times in connection with this litigation, one or more of the Church Does, the Bank Does, the IDM Does, and the Joyce-Pollard Does were either employed by or associated with ABC News, Inc.

At all relevant times in connection with this litigation, the Trinity Defendants, Wilson, Martin, and the Blains were associated with ABC News, Inc.

At all relevant times in connection with this litigation, American Broadcasting Companies, Inc., and Capital Cities/ABC, Inc., were associated with ABC News, Inc.

4) Relationship Between the Defendants and the Enterprise:

At all relevant times in connection with this litigation, each person and entity listed in the preceding two paragraphs were "persons" separate and apart from ABC News, Inc., as an "enterprise" and participated in the conduct of the affairs of ABC News, Inc., through the pattern of racketeering activity alleged herein.

5) Status and Culpability of the Defendants in Relation to the Enterprise:

ABC News, Inc., through the acts of those employed by or associated with it, was an active perpetrator of the alleged racketeering activity.

e. IDM:

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise:

IDM is a data processing company located in Tulsa, Oklahoma.

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise:

At all relevant times in relation to this litigation, one or more of the IDM Does were either employees of, or associated with, IDM.

3) Defendants Associated with the Enterprise:

At all relevant times in relation to this litigation, one or more of the IDM Does were either employees of, or associated with, IDM.

At all relevant times in connection with this litigation, through one or more IDM Does, the ABC Defendants were associated with IDM.

4) Relationship Between the Defendants and the Enterprise:

At all relevant times in connection with this litigation, each person and entity listed in the preceding two paragraphs were "persons" separate and apart from IDM as an "enterprise" and participated in the conduct of the affairs of IDM through the pattern of racketeering activity alleged herein.

5) Status and Culpability of the Defendants in Relation to the Enterprise:

IDM was an innocent victim.

f. The Bank:

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise:

At all relevant times related to this litigation, the Bank was a federally insured bank located in Tulsa, Oklahoma.

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise:

At all relevant times in relation to this litigation, one or more of the Bank Does were either employees of, or associated with, the Bank.

3) Defendants Associated with the Enterprise:

At all relevant times in relation to this litigation, one or more of the Bank Does were either employees of, or associated with, the Bank.

At all relevant times in connection with this litigation, through one or more Bank Does, the ABC Defendants were associated with Bank.

4) Relationship Between the Defendants and the Enterprise:

At all relevant times in connection with this litigation, each person and entity listed in the preceding two paragraphs were "persons" separate and apart from the Bank as an "enterprise" and participated in the conduct of the affairs of the Bank through the pattern of racketeering activity alleged herein.

5) Status and Culpability of the Defendants in Relation to the Enterprise:

The Bank was an innocent victim.

g. The Church:

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise:

The Church is a non-profit, tax exempt Christian church having the organizational form, and the theological beliefs described in *Part One*.

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise:

At all relevant times in relation to this litigation, one or more of the WOF Does were either employees of, or associated with, the Church.

3) Defendants Associated with the Enterprise:

At all relevant times in relation to this litigation, one or more of the WOF Does were either employees of, or associated with, the Church

At all relevant times in connection with this litigation, through one or more WOF Does, the ABC Defendants were associated with the Church.

4) Relationship Between the Defendants and the Enterprise:

At all relevant times in connection with this litigation, each person and entity listed in the preceding two paragraphs were "persons" separate and apart from the Church as an "enterprise" and participated in the conduct of the affairs of the Church through the pattern of racketeering activity alleged herein.

5) Status and Culpability of the Defendants in Relation to the Enterprise:

The Church was an innocent victim.

h. Joyce & Pollard:

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise:

Joyce & Pollard is a law partnership in Tulsa, Oklahoma.

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise:

At all relevant times in relation to this litigation, one or more of the Joyce-Pollard Does were either employees of, or associated with, Joyce & Pollard.

3) Defendants Associated with the Enterprise:

At all relevant times in relation to this litigation, one or more of the Joyce-Pollard Does were either employees of, or associated with, Joyce & Pollard.

At all relevant times in connection with this litigation, through one or more Joyce-Pollard Does, the ABC Defendants were associated with Joyce & Pollard.

4) Relationship Between the Defendants and the Enterprise:

At all relevant times in connection with this litigation, each person and entity listed in the preceding two paragraphs were "persons" separate and apart from Joyce & Pollard as an "enterprise" and participated in the conduct of the affairs of the Joyce & Pollard through the pattern of racketeering activity alleged herein.

5) Status and Culpability of the Defendants in Relation to the Enterprise:

Joyce & Pollard was an innocent victim.

i. The Association Enterprise:

1) Structure, Purpose, Function, and Course of Conduct of the Enterprise:

The Association Enterprise was an association-in-fact of the RICO Defendants.

2) Defendants' Status as Employees, Officers, or Directors of the Enterprise:

None of the defendants was an employee of the Association Enterprise.

3) Defendants Associated with the Enterprise:

All of the RICO Defendants, Levy, Martin, Wilson, and the Blains were associated with the Association Enterprise.

4) Relationship Between the Defendants and the Enterprise:

At all relevant times in connection with this litigation, each person and entity listed in the preceding paragraph were "persons" separate and apart from the Association Enterprise as an "enterprise" and participated in the conduct of the affairs of the Association Enterprise through the pattern of racketeering activity alleged herein.

5) Status and Culpability of the Defendants in Relation to the Enterprise:

The Association Enterprise, through the acts of those associated with it, was an active perpetrator of the alleged racketeering activity.

7. Merger:

a. The Trinity Foundation:

The Church alleges that the "enterprise" and the "pattern of racketeering" are separate.

b. Capital Cities/ABC, Inc.:

The Church alleges that the "enterprise" and the "pattern of racketeering" are separate.

c. American Broadcasting Companies, Inc.:

The Church alleges that the "enterprise" and the "pattern of racketeering" are separate.

d. ABC News, Inc.:

The Church alleges that the "enterprise" and the "pattern of racketeering" are separate.

e. IDM:

The Church alleges that the "enterprise" and the "pattern of racketeering" are separate.

f. The Bank:

The Church alleges that the "enterprise" and the "pattern of racketeering" are separate.

g. The Church:

The Church alleges that the "enterprise" and the "pattern of racketeering" are separate.

h. Joyce & Pollard:

The Church alleges that the "enterprise" and the "pattern of racketeering" are separate.

i. The Association Enterprise:

The Church alleges that the "enterprise" and the "pattern of racketeering" are separate.

8. Relationship Between The Pattern Of Racketeering And The Enterprise(s):

a. The Trinity Foundation:

The Trinity Foundation, through its leader, Anthony, espouses its own particular theology, and wages a "holy war" on competing and different churches and television ministries. Additionally, as reflected by its articles of incorporation, by-

laws, and production proposal to Fox Television, and by the countless print and broadcast media appearances of Anthony, the Trinity Foundation actively and publicly espouses its own peculiar religious belief for the benefit of the foundation, its officers, employees, and members. The pattern of racketeering activity alleged illegally fostered and facilitated both the ecclesiastical and secular aims of the foundation and its leadership.

b. Capital Cities/ABC, Inc.:

This enterprise is in the lawful for-profit business of broadcasting, usually legally. In this instance, however, those employed by or associated with the enterprise, motivated by religious bigotry and desire for both personal and corporate monetary and professional profit, unlawfully conducted the affairs of the enterprise through the pattern of racketeering activity alleged.

c. American Broadcasting Companies, Inc.:

This enterprise is in the lawful for-profit business of broadcasting, usually legally. In this instance, however, those employed by or associated with the enterprise, motivated by religious bigotry and desire for both personal and corporate monetary and professional profit, unlawfully conducted the affairs of the enterprise through the pattern of racketeering activity alleged.

d. ABC News, Inc.:

This enterprise is in the lawful for-profit business of broadcasting, usually legally. In this instance, however, those employed by or associated with the enterprise, motivated by religious bigotry and desire for both personal and corporate monetary and professional profit, unlawfully conducted the affairs of the enterprise through the pattern of racketeering activity alleged.

e. IDM:

This enterprise is in the lawful for-profit business of information and data processing for its clients. It was the innocent victim of the RICO Defendants' racketeering activity.

f. The Bank:

This enterprise is in the lawful for-profit business banking. It was the innocent victim of the RICO Defendants' racketeering activity.

g. The Church:

This enterprise is in the lawful not-for-profit business of religious Christian ministry. It was the innocent victim of the RICO Defendants' racketeering activity

h. Joyce & Pollard:

This enterprise is in the lawful for-profit business practicing law. It was the innocent victim of the RICO Defendants' racketeering activity.

i. The Association Enterprise:

This enterprise is an association-in-fact to promote the personal religious bigotries of the individual members. Promoting one's religious views can, of course, be perfectly legitimate, constitutionally protected activity. In this instance, however, those associated with the enterprise, both individuals and corporations, unlawfully conducted the affairs of the enterprise through the pattern of racketeering activity alleged

9. Benefits Received From The Pattern Of Racketeering Activity:

a. The Trinity Foundation Defendants:

- Widespread public notoriety necessary to propagate the peculiar theology and advance both the ecclesiastical and secular agendas of the foundation and its president, including religious bigotry and desire to shut down the

Church and gain a syndicated tabloid television show of their own.

b. The ABC Defendants:

- For the corporate ABC Defendants, money; lot's of it, in the form of increased advertising revenue.
- For the individual ABC Defendants, money and personal and professional advancement; for at least one of them (Sawyer), lot's of it in the form of a new multi-million dollar contract.
- For the individual ABC Defendants, advancement of their personal secular agendas and religious bigotry and desire to shut down the Church.

c. Doe Defendants.:

- In all likelihood the same benefits as the individual ABC Defendants.

10. Effects of the Activities On Interstate Commerce:

A nationally broadcast television ministry has been shut down, resulting in millions in lost donations, lay-offs, displaced families, and reductions in outreach ministries both in this country and abroad.

11. Section 1962(a) Violations:

Not applicable.

12. Section 1962(b) Violations:

Not applicable.

13. Section 1962(c) Violations:

a. Defendants Employed by or Associated with the Enterprise(s):

This is fully delineated in ¶¶ 6 and 7 above.

b. Distinctions Between the "Persons" and the "Enterprise(s)":

This is fully delineated in ¶¶ 6 and 7 above.

14. Section 1962(d) Violations:

As is described in further detail throughout this *RICO Case Statement*, all of the RICO Defendants engaged in an unholy conspiracy to create, publish, circulate and nationally broadcast "news" stories about the Church and its pastor that they knew to be false and fraudulent and based on "evidence" fraudulently and illegally manufactured by the RICO Defendants, for the purpose of destroying the reputation and livelihood of the Church's pastor, terminating the Church's national television ministry and shutting the doors of the Church—all because of the RICO Defendants' own personal religious bigotry and desires to corporately, personally and professionally profit from their public persecution of the Church.

15. Injury To Business Or Property:

The Church has been injured in the following ways:

a. The Church and its beliefs and the Church's pastor have been held up to public ridicule and scorn, and the faith and trust of some of its members and the public have been shattered. Membership and giving has declined significantly, to such a degree that in 1993 the Church was forced to give up its television ministry. This, in turn, forced significant staff reductions and loss of loyal, dedicated employees, with resultant financial hardships for the employees and their families.

b. Because of the decline in giving resulting directly from the RICO Defendants' actions, the Church has been forced to cut back on its outreach ministries.

c. The Church has been subjected to investigation by numerous state and federal agencies—often specifically solicited by the RICO Defendants' through presentation by them to the agency concerned of some of the "evidence" the RICO Defendants fraudulently created—to a raft of civil lawsuits, resulting in tens of thousands of dollars in legal fees and expenses, and the unconstitutional violation of its First Amendment rights. As found by the district court in the *Morales* case:

> Both the nature and extent of the documents demanded [from the church by the Attorney General] were not reasonable and included documents clearly the Attorney General was not entitled to obtain from any religious organization and/or church. 787 F.Supp. at 691.
>
> * * * * * *
>
> The investigation sought by the Attorney General under the provisions of the DTPA in this case unduly burden the Plaintiffs' First Amendment rights to exercise their religion free from excessive governmental interference or entanglement. *Id.* at 698.
>
> * * * * * *
>
> The scope and substance of [the document demands served on the church by the Attorney General] are clearly unconstitutional. The State has no constitutional authority to know a person's membership in or support of any church. The State has no constitutional authority to know what a person believes, how he or she practices religion or how he or she supports religious activity. Nor does the State have constitutional authority to probe into the internal operations of a church without limitation or compelling purpose. *Id.* at 699.
>
> * * * * * *
>
> The Attorney General, during the hearings [in this case], tacitly admits both the January 13, 1992, document de-

mand and requested relief in the *quo warranto* proceedings are unconstitutionally invasive and requested that amendments to both documents be allowed. *Id.*, at 700, n. 12.

* * * * * *

Plaintiffs should not be forced to resort to the courts to be allowed to exercise their First Amendment rights. Section 17.61(g) of the DTPA requires just that in order for a person to challenge the Attorney General's document demand. *Id.* at 701.

* * * * * *

Furthermore, proceeding with the investigation under the DTPA, as interpreted by the Attorney General, would result in an excessive entanglement with the Church in violation of the Establishment Clause of the First Amendment. *Id.*

* * * * * *

Investigation of the Plaintiffs under the DTPA is equally impermissible under the First Amendment. Investigation of Plaintiffs by the Attorney General under the DTPA is for the sole purpose of ascertaining whether or not the Plaintiffs have violated the DTPA. If the Attorney General determines that a violation exists, he may seek injunctive relief . . . . If injunctive relief is granted, the court retains jurisdiction, and the Attorney General may bring actions if the Plaintiffs do not comply, meaning of course that the Attorney General must monitor the Plaintiffs' activities to ensure compliance . . . . Plaintiffs' pamphlets, advertisements, television broadcasts, sermons, *etc.* would be subject to inspection and approval by the Attorney General. Certainly this continual moni-

toring of the Plaintiffs' activities by the Attorney General would constitute an excessive entanglement. *Id.* at 702.[55]

d. In an attempt to rebut the RICO Defendants' scurrilous accusations, the Church was forced to incur significant expenses in producing the televised rebuttal to *PrimeTime Live*, *PrimeTime Lies*.

16. Causal Relationship Between The Injury And The Pattern Of Racketeering Activity:

The injuries and damages the Church has suffered are directly attributable to the RICO Defendants' racketeering activity, especially the three *PrimeTime Live* broadcasts.

17. Damages Sustained And Defendants' Liability:

The RICO Defendants are jointly and severally liable for proximately causing not less than $50,000,000 in damages to the Church.

18. Other Federal Causes Of Action:

The complaint also alleges civil rights violations under 42 U.S.C. §1985. The court has, however, previously granted all defendants' motions—both those of the RICO Defendants and the other non-RICO Defendants—to dismiss those allegations.

19. Pendent State Law Claims:

None have been alleged at present. However, it is apparent that, at a minimum, the contractual relations between the Bank, IDM, Joyce & Pollard, and the Church, and between the Church and its employees, were tortiously interfered with, the Church reserves the right to later seek amendment of their

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[55] Although the Fifth Circuit reversed *Morales*, it did so on the grounds that the district court should have abstained from entertaining the case. The appellate court did not take issue with the district court's factual findings concerning the investigation's infringement of plaintiffs' rights.

pleadings to plead these and other pendent claims as discovery develops.

20. Additional Information Helpful To The Court:

This information is set forth in narrative form in *Part One*, above. Additionally, concurrently submitted with this *RICO Case Statement* are numerous exhibits, both relevant key documents and video tapes, upon which the *RICO Case Statement* is, in part, based.

Respectfully Submitted,

/s/_____
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on Mr. Paul C. Watler, Jenkens & Gilchrist, 1445 Ross Avenue, Suite 3200, Dallas, Texas 75202-2799; Mr. Richard A. Rohan, Carrington, Coleman, Sloman & Blumenthal, L.L.P., 200 Crescent court, Suite 1500, Dallas, Texas 75201; and Ms. Annabel Lugo, Jackson & Walker, L.L.P., 901 Main Street, Suite 6000, Dallas, Texas 75202-3797; by hand delivery; and on Mr. Floyd Abrams, Cahill, Gordon & Reindel, 80 Pine Street, New York, New York 10005 by regular U.S. Mail, this 9th day of May, 1994.

/s/_____
JOHN L. ROSS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

No. 3:93-CV-2310-T
Filed March 18, 1994
Nancy Doherty, Clerk

WORD OF FAITH WORLD OUTREACH CENTER CHURCH, ON BEHALF OF ITS MEMBERS, AND WORD OF FAITH WORLD OUTREACH CENTER CHURCH, INC., A DISSOLVED CORPORATION, ON BEHALF OF ITS MEMBER,

PLAINTIFFS,

V.

DIANE SAWYER, *ET AL.*,

DEFENDANTS.

INTERLOCUTORY JUDGMENT

This action came on before the Court on Defendant's Motions to Dismiss, Honorable Robert B. Maloney, presiding, and the issues having been duly considered and a decision having been rendered,

It is ORDERED and ADJUDGED that Plaintiffs' claims under 42 U.S.C. § 1985(2) and (3) are dismissed with prejudice.

Signed this 17 day of March 1994.

/s/ Robert B. Maloney
Robert B. Maloney
Presiding Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No.: 393CV2310-T
Filed NOV 11, 1994
Nancy Doherty, Clerk

WORD OF FAITH WORLD OUTREACH CENTER CHURCH, A CHURCH ON BEHALF OF ITS MEMBERS and WORD OF FAITH WORLD OUTREACH CENTER CHURCH, INC., A DISSOLVED CORPORATION, ON BEHALF OF ITS MEMBERS

Plaintiffs,

vs.

DIANE SAWYER, an individual; CAPITAL CITIES/ABC, INC., a New York corporation; AMERICAN BROADCASTING COMPANIES, INC., a Delaware corporation; ABC NEWS, INC., a Delaware corporation; A.H. BELO CORPORATION, a Texas corporation; WFAA-TV, INC., a Texas corporation; BILL BROWN, an individual; THE DALLAS MORNING NEWS, INC., a Texas corporation; ED HOUSEWRIGHT, an individual; STEVE BLOW, an individual; ED BARK, an individual; ROBBIE GORDON, an individual; KELLY SUTHERLAND, an individual; JEFF COOKE, an individual; TRINITY FOUNDATION, INC., a Texas non-profit corporation; OLE ANTHONY, an individual; HARRY GUETZLAFF, an individual; POWELL HOLLOWAY, an individual, and JOHN and/or JANE DOES 1-30, individuals,

Defendants.

COMPLAINT

Plaintiffs, Word of Faith World Outreach Center Church, a church, on behalf of its members, and Word of Faith World Outreach Center Church, Inc., a dissolved corporation, on behalf of its members, herein allege for their Complaint as follows:

Nature of the Action

1. This is an action arising under the Constitution and laws of the United States, and pursuant to Title 42 U.S.C. § 1985(3), seeking damages from the above-named Defendants for conspiring and going in disguise, both on the highways and on the premises of others, for the purpose of depriving, directly and indirectly, the Plaintiff Church and its members of the equal protection and equal privileges and immunity of their religious Civil Rights that they enjoy by virtue of their Federal citizenship to freely conduct their religion; and also for the purpose of preventing and/or hindering the constituted authorities of both the State and Federal government from giving or securing to Plaintiff Church and its members equal protection of their religious Civil Rights that they enjoy by virtue of their Federal citizenship to freely conduct their religion.

2. This is also an action arising under the Fourth Amendment to the Constitution of the United States and also pursuant to Title 42 U.S.C. 1985(2) seeking damages from the above-named Defendants for conspiring to influence the verdict, presentment and indictment by grand jury; and for conspiring for the purpose of impeding, hindering, obstructing and defeating the due course of justice in the courts of Texas and Oklahoma with the intent to deny Plaintiffs their equal protection of the law and to injure Plaintiffs in their property in that the Defendants framed or attempted to frame the Plaintiffs of the crime of mail fraud and presented that information to governmental authorities for the purpose of prose-

cuting Plaintiffs of that crime to the end of the destruction of the Plaintiffs' Church.

Jurisdiction and Venue

3. This court has original jurisdiction of this action pursuant to 28 U.S.C. §§1331 and 1343.

4. This court has original subject matter jurisdiction in that Plaintiffs have asserted a right to recover under the Constitution and laws of the United States as established in ***Bell v. Hood***, 327 U.S. 678, 681-683, and ***Bray v. Alexander Women's Health Clinic***, 122 L.Ed.2d 34.

5. The Defendants' acts and practices herein described occurred entirely or partially within the Northern District of Texas, and the conspiratorial acts of the Defendants were furthered through the actions of certain of the Defendants in this district. Venue is proper in this Court, pursuant to 42 U.S.C. 1391(b)(2), as a substantial part of the events giving rise to this claim occurred in this district. Venue is proper in this court, pursuant to 28 U.S.C. § 1391(b)(1), as a substantial number of the Defendants reside in this district.

The Parties

6. Plaintiff, Word of Faith World Outreach Center Church, Inc., on behalf of its members, was a Texas not for profit corporation. It was dissolved on March 30, 1992. Plaintiff was located in Farmers Branch, Dallas County, Texas.

7. Plaintiff, Word of Faith World Outreach Center Church, a Church on behalf of its members (the "Church"), is located in Farmers Branch, Dallas County, Texas.

8. The Plaintiff-members are those persons who are presently members of Word of Faith World Outreach Center Church and were members of Word of Faith World Outreach Center Church, Inc. prior to its dissolution, and/or regularly attend Church services at the Church's principal sanctuary located in Farmers Branch, Texas.

9. Defendant, Diane Sawyer ("Sawyer"), is an individual believed to reside in New York, New York, and is a reporter for ABC News.

10. Defendant, Capital Cities/ABC Inc. ("Capital Cities"), is a New York corporation.

11. Defendant, American Broadcasting Companies, Inc. ("ABC"), is a Delaware Corporation. ABC is believed to be a subsidiary of Capital Cities.

12. Defendant, ABC News, Inc. ("ABC News"), is a Delaware corporation. ABC News is believed to be a subsidiary of Capital Cities.

13. Defendant, A.H. Belo Corporation ("Belo"), owner of WFAA-TV, Dallas, Texas, and also owner of The Dallas Morning News, a newspaper, is located in Dallas, Texas.

14. Defendant, WFAA-TV ("WFAA" or "Channel 8"), is a Texas corporation.

15. Defendant, Bill Brown ("Brown"), believed to reside in Dallas County, Texas, and is a reporter for WFAA-TV, Dallas, Texas.

16. Defendant, The Dallas Morning News ("Dallas Morning News"), is a newspaper located in Dallas County, Texas.

17. Defendant, Ed Housewright ("Housewright"), an individual residing in Dallas, County, Texas, is a member of the Trinity Foundation and is an Editor for the Dallas Morning News.

18. Defendant, Steve Blow ("Blow"), is believed to reside in Dallas County, Texas.

19. Defendant, Ed Bark ("Bark"), is believed to reside in Dallas County, Texas.

20. Defendant, Roberta Gordon ("Gordon"), is an individual believed to reside in New York, New York.

21. Defendant, Kelly Sutherland ("Sutherland"), is an individual believed to reside in New York, New York.

22. Defendant, Jeff Cooke ("Cooke"), is an individual believed to reside in Los Angeles, California.

23. Defendant, The Trinity Foundation, Inc. ("Trinity Foundation"), is a Texas non-profit corporation, located in Dallas, Texas.

24. Defendant, Ole Anthony ("Anthony"), is an individual residing in Dallas County, Texas.

25. Defendant, Harry Guetzlaff ("Guetzlaff"), is an individual residing in Dallas County, Texas, and is a member of the Trinity Foundation.

26. Defendant, Powell Holloway ("Holloway"), is an individual residing in Dallas County, Texas, and is a member of the Trinity Foundation.

27. Defendants, John and/or Jane Does 1-15 ("Does 1-15"), are individuals believed to reside in either Texas and/or Oklahoma, who will be named as they become known.

28. Defendants, John and/or Jane Does 16-30, ("Does 16-30"), are individuals believed to reside in either Texas, some of which are either Directors, Trustees, Officers, members, agents, employees or knowing supporters of the Trinity Foundation, and have taken a vow of poverty to avoid liability for their acts.

BACKGROUND

29. One of the central beliefs of the Church and its members is the importance and necessity of tithing and the making of vows to God through the church. Among other things, the Church teaches and its members believe that financial support is required by the Bible and must be freely given. The Church and its members also believe the expressions of faith and trust as manifested by financial vows to God, through the Church, are rewarded, and that the faithful will prosper physically, spiritually, and financially. The class of

churches that subscribes to this interpretation of the Holy Scriptures is often referred to as "prosperity" churches. The message of churches that belong to this "class" is often referred to as a "prosperity message." Prosperity churches teach that people can, may, and should make vows out of their need and not out of the need of the Church. The Church and its members believe that God answers prayers and that God wants all people to prosper spiritually, physically and financially. The Church and its members believe that God performs miracles today just as Christ performed miracles. All of the prayers that the Church offers its members are free, and the Church has never sold or performed any miracles. The Church and its members believe that Christ performs many miracles in answer to the prayers of its ministers and of its followers. The beliefs of this Church and its members are based exclusively on the Word of God as revealed in the Holy Scriptures. The Church's central beliefs are summarized in "Word of Faith World Outreach Center Church-Statement" and "Word of Faith World Outreach Center Church - What We Believe." True and correct copies are attached hereto as exhibits "A" and "B", respectively.

30. Prosperity class churches believe that members of the Church should tithe, and that the tithe belongs to the Church. In addition to giving tithes, prosperity class churches teach that members should also give offerings to the church.

31. Prosperity churches are a relatively new and comparatively small, distinct religious class of churches. The message of this "prosperity class" of churches is also relatively new and is not accepted by nor acceptable to well-established, conventional Christian classes such as the Baptist, Methodist, Presbyterian, Lutheran and Catholic churches. Prosperity churches are, by reason of their newness and the nonacceptance of their message by the mainstream of society, often the target of persecution, ridicule, and continuous attempts by those in the mainstream to eradicate this prosperity religious message that they abhor. Prosperity churches con-

stitute the exact form of religious class that the authors of 42 U.S.C. § 1985(3) knew needed protection.

32. Certain of the Defendants joined in the conspiracy alleged herein during the mid-1980's. Other Defendants joined this conspiracy at later points in time. This conspiracy has continued unabated through the date of this Complaint. None of the Defendants who have joined the conspiracy has ever taken any affirmative act to disavow the conspiracy or their conspiratorial plan to destroy the Plaintiffs' right to freely exercise their religion. A part of this conspiracy driven by religious discriminatory animus and greed was to convince State and Federal authorities to take actions to investigate and prosecute the Plaintiffs for crimes the Defendants framed the Plaintiffs of committing, and for the Defendants to make known to the public those actions by governmental authorities for the purpose of destroying the Plaintiffs' rights to freely conduct their religion and espouse their religious beliefs.

33. The conspiracy begins as far back as 1987, with Ole Anthony of the Trinity Foundation giving testimony to the House Ways and Means Oversight Subcommittee concerning Robert Tilton and other evangelists in an attempt to prod Congress into removing Televangelists from television. This was near the beginning of a continuing course of conduct by The Trinity Foundation, Inc. The Trinity Foundation, Inc., hereinafter referred to as "Trinity Group," was comprised of Ole Anthony, Harry Guetzlaff, Powell Holloway, and Does #16-30. On the surface, Trinity Foundation, Inc., is organized as a Texas non-profit corporation with its stated purpose being as follows:

> The purposes for which the corporation is organized are exclusively religious, charitable and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954 in promoting the public interest in the State of Texas by organizing, designing, producing, presenting, operating, and supporting Christ-centered communications projects, including radio and

> television programs and presentations, movies and film productions, and in general all types of communications which will convey the love of Christ to the general public.

(Article 4, Trinity Foundation Article of Incorporation).

Allegedly to meet the ends of the corporation, Anthony has taken an alleged vow of poverty and is supported by a group of donors, listed as John or Jane Does, whose names will be added as parties Defendants as soon as their names and identities are discovered. In actuality, Trinity Foundation is a false-fronted organization, established as a non-profit corporation, in which some members take a vow of poverty to better shield members and donors from liability for actions taken furthering the true purpose of the organization, and also to fraudulently shield income and donations from taxation. Contrary to the stated purpose of the Foundation, its apparent reason for existence is to further the personal agenda, driven by religious discriminatory animus, of its leader, Ole Anthony, and its supporting members to destroy the Constitutionally-protected rights of the Plaintiffs' minority religion. An example of the agenda that Ole Anthony has made his mission to pursue is best seen in his own words:

> "My prediction is the Word of Faith won't be around in four years, and the land where the church once stood will be a parking lot." He says. "It'll be covered with cracks with weeds growing through them, and birds of flight will nest in the remains of the building."

("Dallas Observer", Dec. 5, 1991).

The monies that the Doe Defendants and the named Defendants contribute to the Trinity Foundation are used by the Trinity Foundation almost exclusively to perpetuate the objective of destroying the Plaintiffs' minority Church's rights to freely exercise its religious beliefs. Each of those Doe contributors and supporters of the Trinity Foundation have full knowledge of the mission of the Trinity Foundation, and

are active conspiratorial members of the conspiracies alleged herein.

34. Defendants ABC, Sawyer, Gordon, and Sutherland, driven by religious discriminatory animus and greed, set out in the late spring of 1991 to do a story on Plaintiffs that would destroy the Church and save their failing "news" program, *PrimeTime Live*, by attacking the rapidly-growing Church of Plaintiffs. The combination of Plaintiffs' rapid growth in recent years, coupled with the fact that Plaintiffs were still a minority church widely disapproved of by the majority mainstream and despised by the Defendants, made Plaintiffs attractive fodder for a destructive "expose" that would capture ratings. By unleashing a media assault on such a disapproved-of minority religion, and subsequently convincing State authorities to take action to eliminate Plaintiffs as an effectively-operating religion, Defendants would gain approval and validity necessary to boost ratings and their respective incomes, and destroy the Church at the same time.

35. Defendant Gordon admits in her affidavit filed with the court in ***Tilton v. Capital Cities/ABC, Inc.***, the following:

> In the late spring of 1991, Diane Sawyer asked me if I would be interested in working with her on a story on televangelists and their practices. I agreed to do so and after discussing the matter with my senior producer, I began to research the story together with Kelly Sutherland, an associate producer..

(Gordon Affidavit, Tilton v. Capital Cities/ABC, Inc.).

Thus one major party to the conspiracy, hereinafter referred to as "ABC Group," consisting of Capital Cities/ABC, Inc., Sawyer, Gordon, Sutherland and Jeff Cooke, began their quest to rob Plaintiffs of their religious rights.

36. The conspiracy itself began to take on a larger form and purpose at the inception of the contacts between Trinity and ABC Groups. In trial testimony, from ***Tilton v. Morales***, Anthony admits to being contacted by ABC:

Q: Okay. Earlier in this proceeding there was introduced into evidence a videotape copy of the Prime Time Live show concerning Word of Faith. Are you familiar with that broadcast?

A: (by Anthony) Yes, I am.

Q: What was your participation in that?

A: In May of 1991, a producer from Prime Time Live contacted us and asked us if we would work with them on an expose--

THE COURT: Excuse Me. When you say "us" and "we," who do you mean?

THE WITNESS: Trinity Foundation. I'm sorry.

Anthony also contacted ABC News and Sutherland by a letter dated May 28, 1991, in which Anthony describes Plaintiff's Pastor as "callous," and the beliefs of Plaintiffs as "heresy." The letter further accuses Plaintiffs of violating tax laws and defrauding the public. The thrust of the letter is an appeal from Trinity Group to ABC Group to embark upon a path to bring Plaintiffs into ruin and prevent them from exercising their rights and privileges as citizens of the United States to freely believe and practice their minority religion. It states, in part:

> Tilton and others, by consistently refusing to discuss these issues, or even to answer phone calls from reporters, confirm that their teachings are absurd and indefensible.
>
> * * *
>
> If these kinds of abuses occurred in any other part of our society besides religion, they would be exposed by the press and shut down by an outraged public.
>
> * * *

> Televangelists should open up their finances for public examination and their beliefs for public debate and come out of hiding.
>
> And, they should either take a vow of poverty or get off the air.

The conspiracy now in progress and motivated by animus and bigotry toward Plaintiffs' chosen beliefs, was joined by ABC and the rest of the Defendants.

37. Defendants did not limit themselves to merely conceptualizing the violation of Plaintiffs' rights; they took actions in furtherance of their conspiracy. In August of 1991, Defendants Gordon, Anthony and Cooke traveled to Tulsa in order to fraudulently tour the facilities of Response Media, and conduct a hidden camera interview of Plaintiffs' printer. During this tour, Defendant Cooke was in physical disguise, concealing both his appearance and the hidden camera used to film the Plaintiffs' printer. This hidden camera was used to falsify evidence regarding Plaintiffs on film. This falsified evidence was presented to governmental authorities by Diane Sawyer, coupled with specific lies by Sawyer to persuade those authorities to investigate and prosecute the Church's principal Pastor. These actions were taken to further the conspiracy to destroy the rights of the Plaintiff. Defendants Gordon, Anthony and Cooke also went in disguise by concealing their identities and their purpose for seeking the tour and interview with Response's President, Jim Moore. Defendants Gordon, Anthony and Cooke told Jim Moore that they were there exploring possibilities for expanding Anthony's own ministry. Anthony, Gordon and Cooke's true intentions were revealed by their own hidden microphone after they left the Response plant. Regarding Plaintiffs' principal Pastor, they state:

> Mr. Anthony: Yeah, I don't know. That may have been a mistake, but I just needed---I just felt like we needed more.

Ms. Gordon: I know. I don't feel like we've got him (Tilton) nailed right now.

Mr. Anthony: Well, all you really have right now is background.

Ms. Gordon: Well, we know that Tilton never promises to do anything with his money---that's going to be nice (inaudible)--but the fact that they don't, you know, (inaudible). I have the feeling that (inaudible).

Mr. Anthony: Yeah, well again, we've got all of the---

Ms. Gordon: Well, he does we're in good shape, but if he doesn't then we're crushed.

(Transcript Moore Video)

38. ABC and Trinity Groups not only were members of the conspiracy, they acted in furtherance of the conspiracy, employing disguise, deception, and subterfuge. Acting either as agents of ABC group, or independently for the benefit of ABC group, Doe #1 or Does #1 and #2, gained employment with Plaintiffs' bank, Commercial Bank and Trust (the "Bank"), in Tulsa, Oklahoma, by using false identity and disguising the true purpose for his/her seeking the employment position. Doe #1 or Does #1 and #2, through disguise and deception, gained employment in the Bank's lockbox unit, and in that position were able to steal items of Plaintiffs' mail that were being processed. Plaintiffs believe and allege that Doe #1's or Does #1 and 2's purpose for stealing mail items from Plaintiffs was to supply ABC group with the items, in order that ABC Group in turn would be able to frame Plaintiffs with the crime of mail fraud in furtherance of the conspiracy, and to impede and hinder the judicial processes of the Texas, Oklahoma and Federal courts.

39. In furtherance of the conspiracy, Doe #3, or Does #3 and #4, went in disguise, and concealed their identities and intentions for seeking employment, in order to gain employment with Plaintiffs' mail processor, Internal Data Management (I.D.M.), in Tulsa, Oklahoma. Doe #3, or Does #3 and

#4, like Doe #1 and #2, acted either as an agent(s) of ABC Group, or independently for the benefit of ABC Group. Doe #3's or Does #3 and #4's purpose for going in disguise to gain employment with I.D.M. was to steal mail items belonging to Plaintiffs, and to supply such stolen mail items to ABC Group, in order that ABC Group would be able to frame Plaintiffs with the crime of mail fraud in furtherance of the conspiracy and to impede and hinder the judicial processes of the Texas, Oklahoma and Federal courts.

40. Does #'s 5 through 15, acting as agents of or independently for the benefit of ABC Group and Trinity Group, in furtherance of the conspiracy, did conceal their true identities and intentions and otherwise go in disguise in order to infiltrate Word of Faith World Outreach Center, Inc., for the purpose of gathering information and stealing mail belonging to Plaintiffs. Does 5 through 15 then supplied ABC Group and Trinity Group the information they had gathered, and the mail they had stolen, in order that ABC Group and Trinity Group would be able to frame Plaintiffs with the crime of mail fraud in furtherance of the conspiracy and to impede and hinder the judicial processes of the Texas, Oklahoma and Federal courts.

41. In addition to going in disguise at Response Media, Defendant Cooke attempted to infiltrate the Church by seeking employment as a cameraman. Defendant Cooke disguised his true identity and intentions on his application for employment with the Church. Defendant Cooke was not successful in gaining employment at the Church, but Plaintiffs nevertheless did not discover his true identity until they became fully aware of the conspiracy against them.

42. Plaintiffs discovered the existence of Does 1-15, and their infiltrations after ABC Group aired their libelous attack on Plaintiffs in the form of the November 21, 1991 *PrimeTIME*. In that false "expose" of Plaintiffs, ABC Group presented evidence in the form of mail sent to Tilton by his followers, which Defendants claimed to have found in the trash. This display of "Trashed" mail was intended to demon-

strate that Tilton did not pray over prayer requests sent to him as he promised, and that consequently he was committing mail fraud.

43. ABC Group claimed in the November 21, 1991 *PrimeTIME* that they, with the assistance of Trinity Group, specifically Anthony, Guetzlaff and Holloway, had made trips to the trash dumpsters of Plaintiffs' bank and mail processing center in Tulsa and allegedly found Plaintiffs mail discarded at those locations. The following false statement and allegation of mail fraud was created and broadcast on both episodes of *PrimeTIME* (air-dates November 21, 1991 and July 9, 1992):

> SAWYER:(voice-over) And those items that people have prayed over and sent in, believing that Robert Tilton would take them and pray over them too? If some make it to Tilton, there are thousands that didn't. We found them in the garbage at the bank in the marketing research center.

This would be Defendants' allegedly most important fraudulent evidence of mail fraud against Plaintiffs for use in instigating State action against Plaintiffs.

44. So important was this "evidence" of mail fraud, evidence the Defendants created allegedly to prove that the Church did not fulfill promises its Pastor made through the mails, the Defendants took elaborate steps to insure that they would be able to produce such evidence on film for the general public and for State and Federal authorities. On information and belief, the Defendants stole over the course of several months in 1991, thirty-seven (37) prayer requests. Plaintiffs believe that the Defendants planted the prayer requests in the appropriate dumpsters prior to Trinity Group's searching those dumpsters, or the ABC Group took sacks of trash Trinity Group had collected, planted the stolen requests in those sacks, and returned them to Trinity Group. In either case, the end result was for Trinity Group to be filmed by ABC Group

removing stolen prayer requests from the trash (as well as using prayer requests and other pieces of Church mail which Defendants obtained by fraudulently causing names and addresses to be placed on Plaintiffs' mailing list), thus creating a fraudulent taped record of Plaintiffs' alleged mail fraud.

45. ABC Group and Trinity Group have consistently admitted, under oath, to have worked closely together in producing the film of Plaintiffs' prayer requests being removed from the trash. Anthony, in his November 2, 1992 Deposition taken in ***Harrison v. Tilton***, states:

> Q. (By Ms Byrd) So the trash you discarded was of a religious nature?
>
> A. And--well, there was a lot of religious trash, also. I mean, we--we were--I was under the constant direction of an ABC producer by phone, and we would review constantly the things. And it was a--if they decided to keep something, then we kept it for future reference. And that was basically the--
>
> Q. Who was that producer ?
>
> A. Her name was Robbie Gordon.

(Anthony Depo. vol II, p. 118, l. 7-17)

In the same deposition, Anthony went on to state:

> Q. Who made the decision to get the documents out of the trash in the first place?
>
> A. ABC.
>
> Q. Were you involved in the initial decision at all?
>
> A. No.
>
> Q. Did you contact ABC, or did they contact you?
>
> A. They contacted me.

(Anthony Depo. vol.II, p.122, l. 7-14)

Anthony further implicated ABC Group in the creation of the filmed incidents of trashed prayer requests, by stating:

Q. Was this a staged retrieval when the news cameras were there and you retrieved documents?

A. No.

Q. Who made the decision regarding the planning of these I'll call them trash sweeps?

A. They--it didn't happen that quickly. The decision to go and where to go and when to go was--the decision to go, to do the trash, was ABC's. Then the coordination of when that would take place was between myself and ABC.

Defendant Gordon's testimony in her affidavit is fairly consistent with that of Anthony's. Gordon's account was as follows:

> After I came to understand that Tilton's mail was forwarded directly to a bank in Tulsa and after discussions with Mr. Anthony and others, Mr. Anthony and two colleagues decided to look through the trash at Commercial Bank and Trust Company in Tulsa to see what they found there. Throughout their first "trash run," Mr. Anthony was in close contact with me by telephone and mobile phone. Throughout the course of their trip, Mr. Anthony kept me informed of what he and his colleagues were finding in the trash, the places they were looking for trash, and the unpleasant process of digging through trash itself. What was most significant to me, however, was the fact that Mr. Anthony and his colleagues found large quantities of written requests for prayers and other items which had been personally directed to Robert Tilton in the trash in Tulsa. Mr. Anthony asked me to come to Tulsa with a cameraman to see it all for myself, however I was unable to go immediately because I was going to Haiti at the end of the week.

(Gordon affidavit, page 6)

46. In fact, Gordon did travel to Tulsa with a cameraman to view and film Trinity Group going through dumpsters.

Gordon, Cooke, and another individual (perhaps one of Does 5-15) who is known only by his first name, George, traveled to Tulsa over the period of the eleventh and twelfth of October, 1991, to aid Trinity Group in sorting through dumpsters and filming whatever might be "found" in those dumpsters.

47. The constant communication between Trinity Group and ABC Group during the trash runs was, in reality, not for the benefit of informing ABC Group of the actions of Trinity Group, or of informing of what Trinity Group had found by conducting the "trash runs." Plaintiffs contend that ABC Group had full knowledge of what trash Trinity Group would find and where they would find it; this knowledge sprung from ABC Group's receipt of the stolen prayer requests from Does 1-15, taken from the Bank and I.D.M. Once in possession of the stolen prayer requests, Plaintiffs believe that ABC Group then placed them in the dumpsters at the Bank and I.D.M. immediately prior to Trinity Group searching those locations, and/or placed them in the trash sacks after they had been removed from the premises. At all times relevant, ABC would have available a camera, in order that the staged event could be filmed and later presented in video form to State authorities.

48. Trinity Group, again under the direction of ABC Group, also searched dumpsters on their own, and later met with ABC Group. On such occasions, ABC Group took possession of bags of useless (for their purpose) garbage from Trinity Group before they had been sorted. Plaintiffs believe that ABC Group then planted stolen prayer requests they had received from Does 1-15 in those sacks of garbage and returned them to Trinity Group. Later, when Trinity Group sorted the garbage, they would find the prayer requests, believing they had found them on their "trash runs." On these occasions of "discovery," ABC Group was again present with cameras to record the staged event for the later benefit of interested State authorities.

49. So important were the planted prayer requests that Trinity Group "found" in the dumpster to convince State authorities to take action against Plaintiffs, that Trinity Group created a Bates-stamped "Tilton Evidence Log," detailing where and when they "discovered" prayer requests belonging to Plaintiffs.

50. The existence of the "Tilton Evidence Log," was crucial to Plaintiffs' discovery of the conspiracy between and among the Defendants. Before obtaining the "Tilton Evidence Log," and all the prayer requests that Defendants were relying upon for their frame-up of Plaintiffs, Plaintiffs could not explain how prayer requests could end up in the hands of Defendants, let alone in the garbage at the Bank and at I.D.M.. Plaintiffs' mail does travel to the Bank where donations are removed and deposited; then it travels to I.D.M. where it is read and processed; then the prayer requests are sent on to Dallas for Plaintiffs' Pastor to pray over. It was at all times and remains the policy of the Bank, imposed upon the Bank by the Plaintiffs, that no part of the mail received by the Bank was ever to be placed in the trash. All of the mail received by the Bank after any gift was removed was returned to its envelope and then forwarded in its entirety to I.D.M. It was and is the policy of I.D.M., imposed by the Plaintiffs, that prayer requests were to be forwarded to Dallas, Texas. It was further the policy that no part of the mail received by I.D.M. that was not to be forwarded was ever to be placed in their trash, but was to be retained inside their premises for three (3) or four (4) months. This mail was then to be taken by I.D.M. personnel directly to a trash recycling center to be shredded or burned. Plaintiffs were, therefore, initially unable to understand how Defendants came into possession of prayer requests at the locations claimed by Defendants.

51. Trinity Group's "Tilton Evidence Log," in conjunction with the prayer requests that they claimed to have "found," uncovered the existence of Does 1-15. After Plaintiffs acquired copies of the "Tilton Evidence Log" and copies

of the thirty-seven prayer requests that Trinity and ABC Groups claimed to have found, Plaintiffs were able to compare the information in Defendants' "Tilton Evidence Log" with the "found" prayer requests, and compare those "found" prayer requests with the partner records and the stored trash which was all retained after the broadcast on November 21, 1991. What Defendants did not know, and what will prove to be their undoing, was that Plaintiffs retained all parts of all mailings (including the envelopes), other than the prayer requests which had been forwarded to Texas, for 120 days. When Plaintiffs received copies of the prayer requests that Defendants had claimed to have found in the trash, Plaintiffs realized that the return envelopes that those requests had been mailed in were not present. Plaintiffs then took the information provided by the prayer requests, specifically the names of the individuals and the projects those Church followers were responding to, and searched the processed and retained mail stored at their warehouse. This search of the retained requests turned up all of the return envelopes corresponding to the prayer requests that Defendants claimed to have "found."

52. The significance of the discovery of the return envelopes is that it uncovered further the conspiracy between ABC and Trinity Groups, and their conspiracy with Does 1-15. Trinity Group had claimed under oath that the information in their "Tilton Evidence Log" was accurate beyond a shadow of a doubt. The Defendants' "Tilton Evidence Log" contained information that purported to state what dumpsters (the Bank, I.D.M.) the requests were fished out of, and the specific dates those requests were discovered. Plaintiffs' discovery of the return envelopes proved all of this information to be false. The most glaring example of the falsity of Defendants' "Tilton Evidence Log" and of Defendants' fabrication of lies to frame Plaintiffs of the crime of mail fraud was that some of the prayer requests the Trinity Group swore they found in September have an October postmark on the original return envelopes. The return envelopes and the partner com-

puter records prove that each of the prayer requests in the possession of the Defendants was stolen and planted to frame the Plaintiffs of mail fraud, in order to carry forward the Defendants' conspiracy to destroy Plaintiffs' religious rights and freedoms.

53. Further evidence of Does 1-15 and their actions to further the conspiracy was the discrepancy of the financial amount given by the member as reflected by their partner record and the amount shown on the stolen prayer request in the possession of Defendants. Plaintiffs maintain meticulous records concerning the giving of members; that information is taken from the information placed on the original envelope by the Bank. On several of these original return envelopes, the amounts given as indicated by the bank were not compatible with the long term past giving of those individual partners. When the stolen prayer requests were obtained from ABC and Trinity Groups, those stolen requests indicated that the members had given much larger amounts, which was consistent with their history of giving, than was shown on the original envelope. Plaintiffs asked those members how much they had actually given, and those individuals indicated the amounts that their prayer requests had shown, not the amounts reflected by the envelopes. Whoever stole the mail at the Bank removed the prayer request and the money from the return envelope, put a smaller amount of money in the envelope and, months later, put the letter back into the system without the prayer request form. That that individual or individuals, Does 1-15, were acting to further the conspiracy is indicated by the fact that ABC and Trinity Groups had those stolen prayer requests in their possession and used those stolen prayer requests to frame the Plaintiffs.

54. Defendants' "Tilton Evidence Log" was created for the sole purpose of framing the Plaintiffs' Pastor and the Plaintiffs of mail fraud and was used to influence State and Federal action against Plaintiffs. Defendant Anthony has testified that this fraudulent "Tilton Evidence Log" was created

at the offices of Trinity Foundation on or about December 31, 1991, with the aid of Internal Revenue Agents Maudie Connely, Wade Clark, and Janet Hughes. Also, while Trinity Foundation was creating this "Tilton Evidence Log," allegedly with the aid of the I.R.S., it was at the same time giving a presentation to the I.R.S. concerning the evidence they had found that allegedly proved mail fraud on behalf of Plaintiffs. Anthony, in his deposition in ***Harrison v. Tilton***, states:

> Q. (By Ms.Byrd) Did you make presentation to the IRS regarding Reverend Tilton?
>
> A. (by Anthony) Yes.
>
> Q. Was part of your presentation done by way of videotape?
>
> A. I don't remember.
>
> Q. Where did you make this presentation ?
>
> A. At our office.
>
> Q. Did you make the presentation before or after the Bates Stamping began?
>
> A. It was simultaneous. The Bates stamping was going on while other members of the IRS came.
>
> Q. So you were making a presentation to the IRS at Trinity Foundation to some agents while others agents were Bates stamping documents?
>
> A. Yes.

(Anthony Depo. P98, ll. 2-17)

The Defendants enlisted the aid of, and at the same time attempted to, convince agents of the I.R.S. to commence action against Plaintiffs on the basis of evidence that the Defendants knew to be false and wholly-fabricated by the efforts of the conspirators.

55. The prayer requests stolen by the Defendants to further their conspiracy to influence State action and violate the rights of Plaintiffs, together with other fraudulent infor-

mation and deliberate lies, were not only provided to the I.R.S. They were also provided to a high official with the U.S. Postal Inspector, representatives of the Federal Communications Commission, a member of the U.S. Congress, the Attorney General's office of the State of Texas, the Dallas County District Attorney, the Farmers Branch Police Department, the Dallas County Central Appraisal District, and other Federal, State and local officials.

56. The efforts by Defendants to influence State action with their falsified evidence also manifested itself in a meeting held in December of 1991 between Trinity Group and various State authorities in which Trinity Group provided those authorities with the fraudulent evidence the conspirators had created. Anthony admits to the meeting in his testimony in Federal Court in ***Tilton v. Morales***, stating:

> Q. (By Mr. Guillory) Okay. And your next contact with the Attorney General's Office, would that have been one of the contacts with Ms. Bucy or Ms. Ulrich?
>
> A. (By Anthony) The next contact would have been with both of them together.
>
> Q. Okay. Was that a telephone conversation, a meeting or what?
>
> A. It was a meeting.
>
> Q. Where did you meet?
>
> A. At the controller's office in Dallas, Texas.
>
> Q. Okay. Who else was present at that meeting?
>
> A. There were representatives from several of the legal agencies. I don't have all of their names with me, but--
>
> Q. Okay.
>
> A. There were agents from the IRS, from the Dallas County District Attorney, the Attorney General's office, I think maybe a couple of other agencies.

Q. And what did you share with those ladies and gentlemen at that meeting?

THE COURT: Excuse me. Could we have a date on this meeting?

Q. (By Mr, Guillory) Do you recall when that was, sir?

A. I'm sorry. I don't have that date. It would have been in early December.

THE COURT: After the November Prime Time show?

THE WITNESS: Yes, sir, it would have been.

THE COURT: All right.

Q. (By Mr. Guillory) Okay. So early December?

A. Yes.

Q. Do you recall what you shared with those ladies and gentlemen at that meeting?

A. During the course of our investigation or activities in Tulsa, we -- we recovered a tremendous amount of data that -- of -- about Robert Tilton ministries, and we shared that data with those agencies.

(Trans. pp 425 ll 15-25, p 426 ll 1-24)

57. Trinity Group operated with the aid of ABC Group in the attempts to involve State authorities. ABC Group provided a videotape copy of the *PrimeTIME* Live episode accusing Plaintiffs of mail fraud to ABC's local affiliate in Dallas, Texas, WFAA-TV, on or about November 20, 1991. Prior to the first airing of the accusatory *PrimeTIME* episode, Defendant Bill Brown, a reporter with WFAA-TV, held a special screening of the episode concerning Plaintiffs for the benefit of the Texas Attorney General's office. As a result of that special screening, the Texas Attorney General's office granted an on-camera interview which was, in part, played in a commercial for the "news" during the *PrimeTIME* broadcast on November 21, 1991 and repeated during the "news" im-

mediately following, in full. In that on-camera interview, the Texas Attorney General's office announced that office was conducting an investigation of Plaintiffs for fraud. No investigation was in progress by the Texas Attorney General's office concerning Plaintiffs prior to November 21, 1991, and they did not have a single complaint in their office that accused the Plaintiffs and their Pastor or any members of fraud.

58. Defendant ABC Group would also present their fraudulent evidence to Congressman Jake Pickle. Diane Sawyer met with Pickle prior to the showing of their *PrimeTIME* expose of Plaintiffs to present him with falsified evidence of Plaintiffs' engagement in mail fraud in order to gain his governmental influence for use in validating their conspiracy to destroy Plaintiffs' religious rights. Congressman Pickle, not knowing that he was being lied to by Defendant Sawyer about Plaintiffs, stated to the effect that an investigation should be commenced. Defendants then used the interview with Pickle, and his comments taken out of context, in their "expose" to validate their conspiracy.

59. Defendants did not limit themselves to framing Plaintiffs of mail fraud with stolen prayer requests. Every aspect of the *PrimeTIME* "expose" was intended to portray the Plaintiffs to be the product of a "get rich scheme" cooked up by the Plaintiffs' Pastor when he was in college. To this end, Defendants showed in the "expose" a backlit man, filmed at the Trinity Foundation, giving a false statement that he had been friends with Plaintiffs' Pastor in college, and that they had planned, while in college, to run a preacher-scam to get rich. This presented to the world that Plaintiffs' religion was false from its inception and not worthy of belief or support.

60. Defendants also further smeared Plaintiffs as frauds by making the assertion that Plaintiffs launder money through an orphanage in Haiti. Defendants showed an individual named Bob Jones in their portion of the expose on W.V. Grant describing how donation money could be laundered through an orphanage in Haiti. Defendants subsequently in

their expose on Plaintiffs, after stating how they had tried and failed to locate an orphanage in Haiti that Plaintiff claimed to support, went on to state:

> SAWYER:(voice-over) And Tilton creates the impression that after he pays for his overhead and all that expensive air time, the money goes to good works like these, his missions around the world. But we tracked down every charitable contribution of Tilton we could find and we calculate he spends more on billboards around Dallas than he does on all of these missions combined.
>
> And what about this mission, Tilton's orphanage in Haiti. We kept thinking about Bob Jones and how he told us you could just fix yourself up a sign and claim an orphanage.
>
> BROTHER BOB JONES: Put your name on there, whatever you want.
>
> SAWYER:(voice-over) Tilton uses three different names for his Haiti orphanages, so when we went to Haiti, we asked the government officials in charge of foreign missions if they'd heard of any of Tilton's orphanages. They said no.
> (interviewing) So nothing from Robert Tilton here?
>
> HAITIAN OFFICIAL: No.

(Transcript Nov.21 *PrimeTIME*)

Defendants knew what they were implying was untrue. Defendants knew the actual name of the orphanage that Plaintiffs supported, and knew names of the people that ran the orphanage. Defendants nevertheless created a lie about Plaintiffs that could be used to further their conspiracy to deny Plaintiffs their religious freedoms. In fact, each and every allegation contained in that November 21, 1991 broadcast concerning Plaintiffs was either untrue, or portrayed in such a manner to inflame public opinion concerning Plaintiffs and

motivate State authorities to take action to deprive Plaintiffs of their right to freely believe and practice their religion.

61. Also on the basis of the fraudulent evidence presented in the Defendants' "expose," a grand jury subpoena was issued to Plaintiffs demanding Plaintiffs' records. This subpoena was issued solely on the basis of the false accusations of mail fraud Defendants leveled against Plaintiffs.

62. The Dallas Morning News assisted the conspiracy, furnishing information to other conspirators and writing stories which lent credence and believability to the stories broadcast by their co-conspirators via *PrimeTime*. The Dallas Morning News received a copy of the broadcast from its co-conspirator ABC and pumped that broadcast telling its viewers, in an article by Ed Bark dated November 21, 1991:

> There are many more inequities to behold during this eye opening investigation. But it's time to prevail upon the mainstream Dallas stations that accept money from these evangelists (Tilton) in return for airing their programs. Look at today's listings. Mr. Tilton is seen on Channels 11, 21 and 27...
>
> The general managers of these stations will be well advised to watch *PrimeTime* Thursday and then decide whether their consciences allow them to continue accepting money from Messrs. Tilton, Leah and Grant.
>
> In the meantime, a spokesman for the Federal Communications Commission and Congressman Jake Pickle of Texas tell *PrimeTime* they intend to investigate the conduct of these ministries.
>
> May God go with them.

63. Also in furtherance of the conspiracy, Defendants WFAA-TV and Bill Brown received from their co-conspirators, ABC Group and Trinity Group, a copy of the *PrimeTime* Live broadcast prior to the time that it was aired. Defendants WFAA-TV and Brown then took that broadcast to the State Attorney General's office of Texas with the specific

purpose of encouraging the Attorney General's office to investigate and prosecute the Church and representatives for the crimes they fraudulently created and broadcast in that *PrimeTIME* episode.

64. Defendant ABC Group also created other and slightly different versions of that broadcast and took those versions to governmental agencies. They not only presented those versions, but lied to those governmental agencies concerning the Church with the specific intent (prior to the first broadcast of *PrimeTIME*) of causing those governmental agencies to take action against the Church. This was done with the specific intent of furthering their conspiratorial plan by disclosing at a subsequent broadcast of *PrimeTIME* that their first broadcast had been so successful that it had caused governmental agencies to take specific action against the Church and its members and Pastor. All of this was accomplished by actions taken by the Defendants in framing the Church of specific acts as set forth in the broadcast and as set forth in their statements to governmental authorities and agencies.

65. Defendants WFAA-TV, Inc. and Bill Brown continued the conspiracy by taking portions of a deposition of the Church's Pastor and Pastor's wife, fraudulently and falsely presenting segments of those depositions on their television news broadcast, making Plaintiffs' Pastor say that which was not said, to further their conspiracy to harm Plaintiffs. Plaintiffs presented evidence of the falsities of this broadcast to WFAA-TV and asked for a retraction which was not broadcast.

66. Also in the furtherance of this conspiracy, Defendant Anthony issued a statement to the press on October 29, 1993, after the announcement by Plaintiffs that it was ceasing television production, that Plaintiffs' Pastor fraudulently transferred large sums of Plaintiffs' assets to offshore accounts, stating:

> We have evidence that money was transported out of the United States to Cayman--the Caymans, Belize, and Aruba and so we can only speculate what, how much money he has salted away somewhere...

(Channel 4 @ 6:00 p.m.)

This statement by Anthony, as is the case with other allegations made by himself and his co-conspirators, is utterly false and fraudulent and made with the purpose of instigating prosecution of Plaintiffs and Plaintiffs' Pastor in order to destroy Plaintiffs' religious freedoms.

67. Defendants' conspiracy was coldly effective in achieving its desired results. Defendants not only were successful in enticing the F.B.I., Postal Inspectors and the I.R.S to immediately commence an investigation of Plaintiffs based upon their fraudulent evidence, but also egged the Texas Attorney General's office into action against Plaintiffs as well. On February 5, 1992, the Texas Attorney General filed in Texas State Court against Plaintiff Word of Faith World Outreach Center Church, Inc., his Plaintiff's Information in Quo Warranto, Original Petition And Application For Injunction, Forfeiture Of Charter And Appointment Of Receiver, based upon belief in the fraudulent evidence gathered and disseminated by Defendants in order to force Plaintiffs to cease functioning as a church in the State of Texas. Plaintiff was forced to defend its Constitutional right to exist without the leave of the Texas Attorney General in Federal Court.

68. Not only have State authorities been influenced to try and deprive Plaintiffs of their Constitutional freedoms, and hindered in giving equal protection to those freedoms, private individuals have been involved as well. On the basis of the evidence created and spread by the Defendants' conspiracy, multiple lawsuits have been filed against Plaintiffs by individuals asserting that they have been defrauded. These lawsuits have sought hundreds of millions of dollars in damages and the Defendants have orchestrated and produced a storm of

negative media publicity against Plaintiffs that has served to perpetuate in the public eye the truth of the false accusations against Plaintiffs created by Defendants' conspiracy. These actions by Defendants have been done to prejudice the community and the courts against the Plaintiffs, to deny the Plaintiffs fair and impartial trials.

69. The effect of Defendants' conspiracy to deprive Plaintiffs of their religious rights has been literally to deprive Plaintiffs of those rights they previously enjoyed. The constant dissemination of the false accusations of fraud, as well as the constant defense against legal attacks by State and Federal authorities and private individuals, has caused Plaintiffs' religion to suffer loss of credibility, respect, esteem and standing in the community, and exposed Plaintiffs to ridicule, hatred, ostracism and threats by the community. In addition to suffering such a negative public image resulting from Defendants' actions, Plaintiffs have lost thousands of members and have consequently lost the ability to carry on a majority of their mission work to bring their message to the masses which is central to their belief.

FIRST CLAIM FOR RELIEF
42 U.S.C. §1985(3) CONSPIRACY

70. Defendants, and each of them, motivated out of animus and bigotry toward Plaintiffs and their religion, conspired to deprive Plaintiffs of the equal protection of the laws and otherwise deprive Plaintiffs of having and exercising equal privileges and immunities under the law and to deprive the Plaintiffs of having and exercising the right and privileges of a citizen of the United States to believe and conduct their individual form of religion and religious worship; of the right to freely exercise religious speech and practices. Freedom of religion is so fundamental that it is one of those rights of United States citizenship that it has even been protected from infringement, in our majority rule form of government, by the First and Fourteenth Amendments to the Constitution.

71. Defendants, and each of them, motivated out of animus and bigotry toward Plaintiffs and their religion, further conspired to prevent and/or hinder the constituted authorities of both Federal and State governments from giving or securing to Plaintiffs equal protection of their religious rights as guaranteed by the Constitution.

72. Defendants, and each of them, pursuant to their conspiracy and motivated by animus and bigotry toward Plaintiffs and Plaintiffs' religious class, did go in disguise, by both false appearance and false identity, in order to infiltrate the Church, Plaintiffs' bank, research center, mail processing center and also appear on television in the form of fraudulent interviews concerning Plaintiffs, with the intent to falsely paint Plaintiffs as frauds in an effort to influence the State and Federal government to act against Plaintiffs, in order that the State and Federal government would deprive Plaintiffs of equal protection of their religious rights, or for preventing or otherwise hindering or impeding State and Federal authorities from giving or securing to Plaintiffs their religious rights.

73. The Defendants' actions caused injury to the property of the Plaintiffs as follows: Prior to the ultimate act of the Defendants' conspiracy that is the broadcast of *PrimeTIME* Live I on November 21, 1991, the gifts Plaintiffs received exceeded its expenditures and the Plaintiffs were able to carry out their religious mission to evangelize the world, to its religious belief, which was and is the principal use of all of the funds that are received by gift by Plaintiffs. Prior to November 21, 1991, Plaintiffs had experienced a growth rate measured by the people joining the Church and the amounts of gifts of over 1% per month. Since November 21, 1991, Plaintiffs have experienced a loss of over 1% per month. As a result of the conspiratorial acts, the funds received by Plaintiffs have continually diminished from an average of over $5 million per month prior to November, 1991, to less than $2 million per month at the present time and on a continuing declining curve. Damage will continue until such time as ver-

dict is rendered in favor of Plaintiffs, restoring all of those funds which would have been received which can then be used to conduct its evangelistic mission. The loss of gift receipts to the Church alone from November 21, 1991 to the present is calculated as in excess of $50 million and there has been a diminution of the assets of the Church in an amount exceeding $11 million, all of which was proximately caused by the conduct of Defendants as set forth hereinabove.

74. The actions of these Defendants causing this harm and damage to Plaintiffs were willful, deliberate and intentional and were calculated to inflict harm and damages on Plaintiffs because of their religious beliefs; which they did inflict upon Plaintiffs.

WHEREFORE, Plaintiffs, Word of Faith World Outreach Center Church and Word of Faith World Outreach Center Church, Inc., pray that this Court:

With respect to Plaintiffs' First Claim for Relief:

(1) Enter Judgment in favor of Plaintiffs against Defendants, and each of them, for compensatory damages in an amount in excess of $61,000,000.00, and punitive damages in such amount as may be set by the jury; and

(2) Award to Plaintiffs judgment for their costs and reasonable attorney's fees.

SECOND CLAIM FOR RELIEF
42 U.S.C. §1985(2) CONSPIRACY

75. The Defendants, and each of them, motivated by animus and bigotry toward Plaintiffs and their religion, did conspire to influence the verdict, presentment and indictment of a grand jury and Texas, Oklahoma and Federal courts; and Defendants, and each of them, conspired for the purpose of impeding, hindering, obstructing and defeating the due course of justice in the courts of the states of Texas, Oklahoma and Federal courts with the intent of denying Plaintiffs their equal protection of law and to injure Plaintiffs in their property in

that Defendants, and each of them, framed Plaintiffs of the crime of mail fraud and presented that information to governmental authorities for the purpose of instigating those authorities to prosecute Plaintiffs of that crime, to the end of the destruction of Plaintiffs' Church.

76. Defendants' actions caused injury to the property of Plaintiffs as follows: Prior to the ultimate act of Defendants' conspiracy that is the broadcast of *PrimeTIME* Live I on November 21, 1991, the gifts Plaintiffs received exceeded its expenditures and Plaintiffs were able to carry out its religious mission to evangelize the world, to its religious belief, which was and is the principal use of all of the funds that are received by gift by Plaintiffs. Prior to November 21, 1991, Plaintiffs had experienced a growth rate measured by the people joining the Church and the amounts of gifts of over 1% per month. Since November 21, 1991, Plaintiffs have experienced a loss of over 1% per month. As a result of the conspiratorial acts, the funds received by Plaintiffs have continually diminished from an average of over $5 million per month prior to November, 1991, to less than $2 million per month at the present time, and on a continuing declining curve. Damage will continue until such time as verdict is rendered in favor of Plaintiffs; restoring all of those funds which it would have received which it can then use to conduct its evangelistic mission. The loss of gift receipts alone to the Church from November 21, 1991 to the present is calculated as in excess of $50 million, and there has been a diminution of the assets of the Church in an amount exceeding $11 million dollars.

77. The actions of these Defendants causing this harm and damage to Plaintiffs were willful, deliberate and intentional and were calculated to inflict harm and damages on Plaintiffs because of their religious beliefs; which they did inflict upon Plaintiffs.

WHEREFORE, Plaintiffs, Word of Faith World Outreach Center Church and Word of Faith World Outreach Center Church, Inc., pray that this Court:

With respect to Plaintiffs' Second Claim for Relief:

(1) Enter Judgment in favor of Plaintiffs against Defendants, and each of them, for compensatory damages in an amount in excess of the jurisdictional requirement of the Court and punitive damages in such amount as may be set by the jury; and

(2) Award to Plaintiffs judgment for their costs and reasonable attorney's fees.

JURY DEMAND

78. Pursuant to the Federal Rules of Civil Procedure, Rule 38, Plaintiffs hereby demand a trial by jury.

WHEREFORE, Plaintiffs pray that this court:

(1) Enter judgment in favor of Plaintiffs against Defendants DIANE SAWYER, an individual; CAPITAL CITIES/ABC, INC., a New York corporation; AMERICAN BROADCASTING COMPANIES, INC., a Delaware corporation; ABC NEWS, INC., a Delaware corporation; A.H. BELO CORPORATION, a Texas corporation; WFAA-TV, INC., a Texas corporation; BILL BROWN, an individual; THE DALLAS MORNING NEWS, INC., a Texas corporation; ED HOUSEWRIGHT, an individual; STEVE BLOW, an individual; ED BARK, an individual; ROBBIE GORDON, an individual; KELLY SUTHERLAND, an individual; JEFF COOKE, an individual; TRINITY FOUNDATION, INC., a Texas non-profit corporation; OLE ANTHONY, an individual; HARRY GUETZLAFF, an individual; POWELL HOLLOWAY, an individual, and JOHN and/or JANE DOES 1-30, individuals, on Plaintiffs' First and Second Claims for Relief for compensatory damages in an amount in excess of $61,000,000.00, and for exemplary or punitive damages in an amount to be determined at trial;

(2) Award to Plaintiffs judgment for their costs and reasonable attorney's fees; and

(3) Award Plaintiffs such other and further relief as the Court deems proper under the circumstances.

/s/
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EXIBIT A

OUR CONFESSION OF FAITH STATEMENT

1. Verbal inspiration of the accepted canon of the Sacred Scriptures as originally given. (II Timothy 3:16; I Corinthians 2:13)
2. The Trinity of the Godhead. (Matthew 28:19; I Corinthians 13:14)
3. The Creation, Test and Fall of man, as recorded in Genesis; his total spiritual depravity and inability to attain to Divine Righteousness. (Romans 5:12, 18).
4. The Saviour of men, the Lord Jesus Christ, conceived of the Holy Spirit, born of the Virgin Mary, very God and very man. (Luke 1:26-35; John 1:18; Isaiah 9:6)
5. Christ died for our sins, was buried and rose again the third day, and personally appeared to His disciples. (I Corinthians 15:1-4; Romans 4:25)
6. The Salvation of sinners by Grace, through Faith in the perfect and sufficient work of the Cross of Calvary, by which we secure remission of sins. (Ephesians 2:8-9; Hebrews 9:12, 22: Romans 5:11)
7. The bodily ascension of Jesus to Heaven, His exaltation, and His personal coming for His Church. (John 14:2,3; I Thessalonians 4:13-18).
8. The Baptism of the Holy Spirit as an experience subsequent to Salvation, with the scriptural evidence; namely, speaking in Tongues. (Acts 2:1-4; 8:14-17; 10:44-46; Galations 3:14-15).
9. The Gifts of the Spirit are enumerated in I Corinthians chapters 12-14, being exercised and practiced as manifest in the early church.
10. The Spirit-filled life, a life of separation from the world and the perfecting of holiness in the fear of God as an

expression of Christian faith. (Ephesians 5:8; II Corinthians 6:14; 7:1).

11. The healing of the body by Divine Power, or Divine Healing in its many aspects as practiced by the early church. (Acts 4:30; Romans 8:11; I Corinthians 12:9; James 5:14; Matt. 8:17; I Peter 2:24).
12. The Lord's Memorial, commonly called Supper, for believers. (I Corinthians 11:23-32).
13. The Eternal Life of the Believer. (John 5:24) and the Eternal Punishment of the Unbeliever. (Mark 9:43-58; II Thessalonians 1:9; Revelation 20:10-15).
14. The reality and personality of Satan. (Jcb 1:7; II Corinthians 11:14).

EXHIBIT B

WORD OF FAITH FAMILY CHURCH
AND
ROBERT TILTON MINISTRIES

WHAT WE BELIEVE

* We believe in the inerrancy and verbal inspiration of the accepted canon of the Scriptures as originally given by God through the Holy Spirit (I Cor. 2:13; II Ti. 3:16; II Pet. 2:20-21).

* We believe in the authority of the Word of God as the guideline for life (Josh. 1:7-8; Mt. 4:4).

* We believe in the Trinity of the Godhead--one God, revealed in three distinct persons, God the Father, God the Son and God the Holy Spirit (Mt. 28:19; Jn. 15:26; I Cor. 12:4-6; Jude 20-21).

* We believe in the creation, test and fall of man, as recorded in Genesis; in man's total spiritual depravity and inability to attain divine righteousness by his own merits (Rom. 3:23; 5:12-18).

* We believe in the incarnation of Jesus Christ, the Son of God; that He was conceived of the Holy Spirit, born of the Virgin Mary, very God and very Man (Lk. 1:26-35; Jn. 1:18; Is. 9:6).

* We believe that Christ died for our sins, according to the Scriptures, was buried and rose again on the third day, and personally appeared to His disciples (I Cor. 15:1-4; Rom. 4:25).

* We believe that Jesus Christ ascended unto Heaven and is seated at the right hand of the Father, making intercession for us (Jn. 20:17; Eph. 4:8; Heb. 7:25; Rom. 8:34).

* We believe in salvation by grace, through faith in the perfect and sufficient sacrifice of Christ at the cross of Calvary

and His resurrection from the dead, as the only way of reconciliation with God for forgiveness and remission of sins (Eph. 2:8-9; Heb. 9:12; Rom. 5:11; Jn. 14:6). We believe this is available to every person, and is received by repentance of sins and confession of Jesus Christ as Lord and Savior (Rom. 10:9-13).

* We believe that every person who makes that decision becomes a new creature (II Cor. 5:17) and is made the righteousness of God in Christ (II Cor. 5:21).

* We believe in the personal second coming of Jesus Christ for His Church (I Th. 4:13-18), to judge the living and the dead (I Ti. 4:1).

* We believe in the baptism of the Holy Spirit, with the evidence of speaking in tongues. This experience can be simultaneous with or subsequent to salvation (Acts 2:1-4; 8:14-17; 10:44-48).

* We believe in the gifts of the Spirit as enumerated in I Corinthians 12-14, and in their exercise and practice as manifested in the Early Church.

* We believe that healing is available to all through the stripes of Jesus and by the power of God alone. Therefore, we pray for healing as practiced in the Early Church (Is. 53:4; Acts 4:30; Rom. 8:11, I Cor. 12:9; Jas. 5:14; Mt. 8:17; I Pet. 2:24; Mk. 16:17-20).

* We believe in the observance of the Lord's supper as a memorial of His death, burial and resurrection until His second coming (I Cor. 11:23-32).

* We believe in the resurrection of the dead, and in the eternal life of the believer (Jn. 3:16) and the eternal punishment of the unbeliever (Mk. 9:43-58; II Th. 1:9; Rev. 20:10-15; Jn. 3:18; Rom. 6:23).

* We believe in the reality and personality of Satan (Job 1:7; II Cor. 11:14; Eph. 4:27; Jas. 4:7). We believe that he is the deceiver of mankind (Rev. 12:9), the accuser of the brethren

(Rev. 12:10), who comes to steal, kill, and destroy (Jn. 10:10a). We believe that he was defeated at Calvary (Eph. 4:8) and that his defeat will ultimately be manifested and consummated at the end of time, when he will be cast into the lake of fire (Rev. 20:10).

* We believe that the Church is the Body of Christ on this earth, appointed to carry His message to the world (Rom. 12:15; I Cor. 12:12, 27; Eph. 1:23).

* We believe in water baptism by immersion as the answer of a good conscience toward God, whereby we reckon ourselves dead to sin (I Pet. 3:21; Rom. 6:3-4).

* We believe that God wants His children to be prosperous and successful in every area of life, according to III John 2, which states that He wants us to prosper both spiritually and materially. This prosperity is reached by obedience to the Word of God (Josh. 1:8).

* We believe that the Christian should put God first in every area of life, according to Matthew 6:33; this should be manifested through faithful stewardship of talents, time, possessions.

* We believe that tithes, offerings and vows are an expression of trust, obedience, devotion and thanksgiving to the Lord on the part of the believer, not a means to buy God's favor (Mal. 3:8-10; Ps. 50:14-15; II Cor. 8:2-5; 9:7).

* We believe in faith as the only way a Christian can please God and live a victorious, joyful life (Heb. 11:6; Rom. 1:17).

* We believe in the significance of faith aids as means to strengthen and encourage the faith of believers, as exemplified in the Scriptures:

* Laying on of hands - Mk. 16:18
* Anointing with oil - Jas. 5:14-15
* Prayer cloths - Acts 19:12
* Points of contact - Mt. 9:20, 14:36

no fraud to be had on this guy = can have fun w/ him though -

(1) Does he use IFB for healing services (more on crusade not phoenix)

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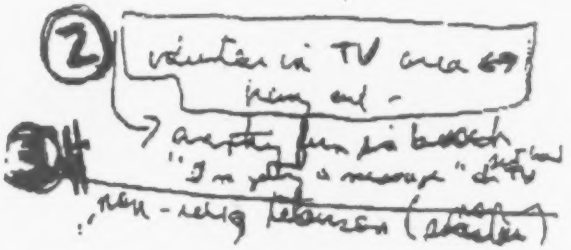

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Date 10/05/91 No. 1227 Page 1 Due Date 10/05/91

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Description	Ordered	Shipped	Unit Price	Extended
Data Recovery Project for ABC News 6 hours @ $75.00/hr - No Mat'l Req'd				450.00

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No. 96-1056

Supreme Court, U.S.
FILED
FEB 5 1997
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

WORD OF FAITH WORLD OUTREACH CENTER CHURCH, *et al.*,

Petitioners,

—v.—

DIANE SAWYER, CAPITAL CITIES/ABC, INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether this Court should reject the teaching of *Bray* v. *Alexandria Women's Health Clinic*, 506 U.S. 263 (1993), and *United Brotherhood of Carpenters and Joiners of America, Local 610, AFL-CIO* v. *Scott*, 463 U.S. 825 (1983), that private conspiracies to infringe First Amendment rights are not actionable under 42 U.S.C. § 1985(3), to expand the reach of § 1985(3) to private conspiracies, motivated by religious animus, to infringe First Amendment rights.

2. Whether the court of appeals erred in its application of the law to the facts alleged by petitioners when it held that petitioners failed to allege a "pattern" within the meaning of the Racketeer Influenced and Corrupt Organizations Act as defined by this Court in *H.J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989).

LIST OF PARTIES AND RULE 29.6 STATEMENT

The parties to the appeal in the United States Court of Appeals for the Fifth Circuit that is the subject of the petition were:

Plaintiffs-Appellants:

Word of Faith World Outreach Center Church, Inc.
Word of Faith World Outreach Center Church

Defendants-Appellees:

Capital Cities/ABC, Inc.
ABC News, Inc.
American Broadcasting Companies, Inc.
Diane Sawyer
Roberta Gordon
Kelly Sutherland
Jeff Cooke
The Trinity Foundation, Inc.
Ole Anthony
Harry Guetzlaff
Powell Holloway

Pursuant to Rule 29.6, the corporate respondents state as follows:

On September 19, 1996, Capital Cities/ABC, Inc. was renamed ABC, Inc. ABC, Inc. is a wholly-owned subsidiary of Disney Enterprises, Inc., which is itself a wholly-owned subsidiary of The Walt Disney Company, a publicly held corporation. ABC, Inc. has no nonwholly-owned subsidiaries except the following (all of which are nonwholly-owned indirect subsidiaries of ABC, Inc.): DSC Videos, Inc.; ESPN, Inc.; New York Farm Show, Inc.; Worldwide Television News Corporation; ABC/EA Home Software, Inc.; and ABC Radio Partners International Limited.

ABC News, Inc. is a wholly-owned subsidiary of ABC News Holding Company Inc., which is itself a wholly-owned

subsidiary of ABC Holding Company Inc., which is itself a wholly-owned subsidiary of ABC, Inc. ABC News, Inc. has no nonwholly-owned subsidiaries.

American Broadcasting Companies, Inc. is a wholly-owned subsidiary of ABC Holding Company Inc. which is itself a wholly-owned subsidiary of ABC, Inc. American Broadcasting Companies Inc. has no nonwholly-owned subsidiaries.

The Trinity Foundation, Inc. has no parent companies and no subsidiaries.

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i

LIST OF PARTIES AND RULE 29.6 STATEMENT ii

TABLE OF AUTHORITIES vi

STATUTES INVOLVED 1

STATEMENT OF THE CASE 2

Statement of Facts 2

Tilton's Other Litigations 3

This Litigation 4

SUMMARY OF ARGUMENT 6

REASONS FOR DENYING THE WRIT 8

I. THE DISMISSAL OF PETITIONERS' SECTION 1985(3) CLAIM WAS CONSISTENT WITH AND REQUIRED BY THIS COURT'S DECISIONS AND PRESENTS NO QUESTION WORTHY OF THE EXERCISE OF THIS COURT'S JURISDICTION..... 8

II. THE COURT OF APPEALS' AFFIRMANCE OF THE DISMISSAL OF PETITIONERS' RICO CLAIM PRESENTS NO QUESTION WORTHY OF THIS COURT'S REVIEW 14

PAGE

A. The Courts Below Properly Applied This Court's Decision in *H.J. Inc.* 14

B. No Split in the Circuits is Created by the Fact that Other Courts Have Found Different Facts to Constitute RICO "Patterns" 17

CONCLUSION 21

TABLE OF AUTHORITIES

Cases PAGE

Action v. *Gannon*, 450 F.2d 1227 (8th Cir. 1971) 12, 13

Aerojet-General Corp. v. *Askew*, 511 F.2d 710 (5th Cir.), *cert. denied*, 423 U.S. 908 (1975) 6n

Blank v. *Heineman*, 771 F. Supp. 1013 (D. Neb. 1991) 13

Bray v. *Alexandria Women's Health Clinic*, 506 U.S. 263 (1993) 7, 8-14

In re Burzynski, 989 F.2d 733 (5th Cir. 1993) 15

Buschi v. *Kirven*, 775 F.2d 1240 (4th Cir. 1985) 13

Calcasieu Marine National Bank v. *Grant*, 943 F.2d 1453 (5th Cir. 1991) 15

Delta Truck & Tractor, Inc. v. *J.I. Case Co.*, 855 F.2d 241 (5th Cir. 1988), *cert. denied*, 489 U.S. 1079 (1989) 15

Griffin v. *Breckenridge*, 403 U.S. 88 (1971) 8, 8n, 9, 10

H.J. Inc. v. *Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989) 5, 7, 14-20

Ikuno v. *Yip*, 912 F.2d 306 (9th Cir. 1990) 17n, 18, 19

Jarvis v. *Regan*, 833 F.2d 149 (9th Cir. 1987) 20n

J.D. Marshall Int'l, Inc. v. *Redstart, Inc.*, 935 F.2d 815 (7th Cir. 1991) 18

LeBlanc-Sternberg v. *Fletcher*, 67 F.3d 412 (2d Cir. 1995), *cert. denied*, 116 S. Ct. 2546 (1996) 13

PAGE

Lewis v. *Pearson Foundation, Inc.*, 908 F.2d 318 (8th Cir. 1990), *vacated on rehearing*, 917 F.2d 1077 (8th Cir. 1990) (en banc), *cert. denied*, 507 U.S. 908 (1993) 13

Marlowe v. *Fisher Body*, 489 F.2d 1057 (6th Cir. 1973) 13

Medallion Television Enterprises, Inc. v. *SelecTV of California, Inc.*, 833 F.2d 1360 (9th Cir. 1987), *cert. denied*, 492 U.S. 917 (1989) 19n-20n

National Organization for Women, Inc. v. *Scheidler*, 510 U.S. 249 (1994) 16n

Olive Can Co. v. *Martin*, 906 F.2d 1147 (7th Cir. 1990) 18

R.A.G.S. Couture, Inc. v. *Hyatt*, 774 F.2d 1350 (5th Cir. 1985) 15n

Schreiber Distributing Co. v. *Serv-Well Furniture Co.*, 806 F.2d 1393 (9th Cir. 1986) 20n

Sever v. *Alaska Pulp Corp.*, 978 F.2d 1529 (9th Cir. 1992) 19, 19n

Shields Enterprises, Inc. v. *First Chicago Corp.*, 975 F.2d 1290 (7th Cir. 1992) 17n, 18

Southwest Airlines Co. v. *Texas International Airlines, Inc.*, 546 F.2d 84 (5th Cir.), *cert. denied*, 434 U.S. 832 (1977) 6n

Sutherland v. *O'Malley*, 882 F.2d 1196 (7th Cir. 1990) 18

Taylor v. *Gilmartin*, 686 F.2d 1346 (10th Cir. 1982), *cert. denied*, 459 U.S. 1147, 463 U.S. 1229 (1983) 11, 12n

PAGE

Ticor Title Insurance Co. v. *Florida*, 937 F.2d 447 (9th Cir. 1991) 17, 17n, 19

Tilton v. *Capital Cities/ABC Inc.*, 827 F. Supp. 674 (N.D. Okla. 1993) 3

Tilton v. *Capital Cities/ABC Inc.*, 905 F. Supp. 1514 (N.D. Okla. 1995), *aff'd*, 95 F.3d 32 (10th Cir. 1996), *petition for certiorari filed*, 65 U.S.L.W. 3401 (U.S. Nov. 25, 1996) (No. 96-817) 3-4, 6n

Tilton v. *Richardson*, 6 F.3d 683 (10th Cir. 1993), *cert. denied*, 510 U.S. 1093 (1994) 3, 9n, 11, 11n-12n

Town of West Hartford v. *Operation Rescue*, 991 F.2d 1039 (2d Cir.), *cert. denied*, 510 U.S. 865 (1993). 13

United Brotherhood of Carpenters & Joiners of America, Local 610, AFL-CIO v. *Scott*, 463 U.S. 825 (1983) 7, 8-14

United States v. *Busacca*, 936 F.2d 232 (6th Cir.), *cert. denied*, 502 U.S. 985 (1991) 17, 17n

United States v. *Turkette*, 452 U.S. 576 (1981) 16n

United States Textiles, Inc. v. *Anheuser-Busch Cos.*, 911 F.2d 1261 (7th Cir. 1990) 18

Vild v. *Visconsi*, 956 F.2d 560 (6th Cir.), *cert. denied*, 506 U.S. 832 (1992) 19

Ward v. *Connor*, 657 F.2d 45 (4th Cir. 1981), *cert. denied*, 455 U.S. 907 (1982) 13

Constitutional Provisions

U.S. Const. Amend. I 7, 9

PAGE

Statutes

Ku Klux Klan Act of 1871
42 U.S.C. § 1985(2) (1994) 2, 4
42 U.S.C. § 1985(3) (1994) 1-2, 3, 4, 5, 6-7, 8-13

Racketeer Influenced and Corrupt Organizations Act
18 U.S.C. § 1961 (1994), *as amended* 1
18 U.S.C. § 1962(c) (1994) 1, 4
18 U.S.C. § 1962(d) (1994) 1, 4
18 U.S.C. § 1964(c) (1994), *as amended* 1

Texas Civil Practice & Remedies Code Ann.
16.002 (West 1986) 4n

Rules

Federal Rules of Civil of Procedure
Rule 12(b)(6) 4, 5n-6n

Rules of the Supreme Court of the United States
Rule 10 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

No. 96-1056

WORD OF FAITH WORLD OUTREACH CENTER CHURCH, *et al.*,

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—v.—

DIANE SAWYER, CAPITAL CITIES/ABC, INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

Respondents respectfully submit that a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on August 7, 1996 should not issue because no question worthy of the exercise of the Court's certiorari jurisdiction is presented and because the decision below is in all respects correct.

STATUTES INVOLVED

The statutes at issue in the court of appeals were the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 (1994), *as amended*, 1962(c) & (d) (1994), 1964(c) (1994), *as amended* ("RICO"), and the Ku Klux Klan Act of

1871, 42 U.S.C. § 1985(3) (1994). Contrary to petitioners' suggestion (*see* Pet. at 1; Pet. App. at 23a),[1] 42 U.S.C. § 1985(2) (1994) was not at issue in the court of appeals. Petitioners did allege a claim under § 1985(2) in the district court, and that claim was dismissed. Petitioners did not appeal that dismissal to the court of appeals.

STATEMENT OF THE CASE

Statement of Facts

Through the 1980s and into the 1990s, Robert G. Tilton ("Tilton"), as pastor of petitioners Word of Faith,[2] became one of the most popular and successful televangelists in the country. Notwithstanding his prominence and the media scrutiny accorded some other televangelists, Tilton prospered without attracting much attention by the national press and media. In the spring of 1991, however, journalists working for ABC's weekly news program *PrimeTime Live* ("*PrimeTime*") began an investigation into Tilton. In the course of their research, the ABC journalists received the assistance of Dallas minister Ole Anthony, president of The Trinity Foundation, Inc., a religious community and charitable organization.

On November 21, 1991, *PrimeTime* broadcast a report about three televangelists, including Tilton, that was highly critical of Tilton and his fund-raising practices. A week later, *PrimeTime* broadcast a brief update reporting on reactions to the earlier broadcast. On July 9, 1992, the original *PrimeTime* report was rebroadcast, with certain minor changes, together with a follow-up report. No other ABC broadcasts are at issue.

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[1] References herein to "Pet. at __" are to the Petition for a Writ of Certiorari. References herein to "Pet. App. at __" are to the Appendix thereto.

[2] Petitioners Word of Faith World Outreach Center Church, Inc. and Word of Faith World Outreach Center Church are referred to herein collectively as "Word of Faith."

Tilton's Other Litigations

As a result of the *PrimeTime* broadcasts, Tilton began a legal assault on ABC, its journalists, and the Trinity Foundation.[3]

First, in May 1992, Tilton filed an action in the United States District Court for the Northern District of Oklahoma against the Trinity Foundation and various lawyers representing individuals in numerous suits against Tilton. Tilton sued for libel and for alleged violations of the Ku Klux Klan Act, 42 U.S.C. § 1985(3). His claims were dismissed, and that dismissal was unanimously affirmed by the Tenth Circuit. *Tilton* v. *Richardson*, 6 F.3d 683 (10th Cir. 1993). This Court denied Tilton's petition for a writ of certiorari. 510 U.S. 1093 (1994).

In November 1992, Tilton commenced a libel action against ABC in the United States District Court for the Northern District of Oklahoma. Shortly thereafter, Tilton moved for a preliminary injunction against any rebroadcast of allegedly false and defamatory statements contained in the November 21, 1991 and July 9, 1992 *PrimeTime* broadcasts. After a five-day evidentiary hearing in June 1993, the district court held that Tilton had failed to demonstrate a likelihood of success on the merits and denied the requested relief. *Tilton* v. *Capital Cities/ABC Inc.*, 827 F. Supp. 674 (N.D. Okla. 1993).

On June 19, 1995, the district court issued its ruling granting ABC's motion for summary judgment as to all claims made in the libel case. *Tilton* v. *Capital Cities/ABC, Inc.*, 905 F. Supp. 1514 (N.D. Okla. 1995). The district court carefully reviewed each of the numerous alleged falsehoods in ABC's

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[3] The respondents here include three of ABC's corporate entities, together with journalists Diane Sawyer, Roberta Gordon, Kelly Sutherland and Jeff Cooke. These respondents are referred to herein collectively as "ABC." The additional respondents are The Trinity Foundation, Inc. and three individuals affiliated with it, Ole Anthony, Powell Holloway and Harry Guetzlaff. These respondents are referred to herein collectively as the "Trinity Foundation."

PrimeTime reports and concluded that no reasonable jury could find that the *PrimeTime* broadcasts were false and/or published with actual malice. That decision was unanimously affirmed by the Tenth Circuit. *Tilton* v. *Capital Cities/ABC, Inc.*, 95 F.3d 32 (10th Cir. 1996), *petition for certiorari filed*, 65 U.S.L.W. 3401 (U.S. Nov. 25, 1996) (No. 96-817).

This Litigation

Having suffered setbacks in his two actions before the Oklahoma federal courts, Tilton turned to the federal courts of Texas. On November 17, 1993, he instituted this action in the name of the church he controls and directs, Word of Faith, challenging the very same *PrimeTime* broadcasts he had challenged in Oklahoma. Having let the statute of limitations expire for any libel claim,[4] however, Word of Faith was forced to dress up its libel claims in federal statutory clothing.

Word of Faith's initial complaint asserted claims under the Ku Klux Klan Act, 42 U.S.C. §§ 1985(2) and 1985(3), based on the investigation and broadcast of ABC's *PrimeTime* reports. All defendants thereafter filed timely motions to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief could be granted. In an Order dated March 16, 1994, the district court granted defendants' motions and dismissed the complaint in its entirety.

After twice more amending its complaint, on August 2, 1994, Word of Faith filed its third amended complaint, asserting new claims under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1962(c) & (d) ("RICO"). ABC moved to dismiss the third amended complaint for failure to state a claim upon which relief could be granted. The Trinity Foundation filed a similar motion, moving in the alternative for summary judgment on the grounds of *res judicata* based on the final disposition of the Oklahoma federal court

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[4] The Texas statute of limitations for defamation claims is one year. Tex. Civ. Prac. & Rem. Code Ann. § 16.002 (West 1986).

action brought against it by Tilton. By Order dated February 8, 1995, the district court granted respondents' motions to dismiss the third amended complaint. (Pet. App. at 17a-22a) The district court entered a final judgment dismissing the action with prejudice. (Pet. App. at 16a)

Word of Faith appealed to the United States Court of Appeals for the Fifth Circuit. On August 7, 1996, the Fifth Circuit unanimously affirmed the judgment of the district court. *Word of Faith World Outreach Center Church, Inc.* v. *Sawyer*, 90 F.3d 118 (5th Cir. 1996). With respect to Word of Faith's claims under RICO, the Fifth Circuit, applying this Court's decision in *H.J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989), held:

> the alleged predicate acts occurred during the production and airing of PrimeTime broadcasts concerning Tilton and his Church. The alleged acts were all part of a single, lawful endeavor—namely the production of television news reports concerning a particular subject. We agree with the district court that the Church has failed to plead a "continuity of racketeering activity, or its threat."

90 F.3d at 123, Pet. App. at 12a-13a (quoting *H.J. Inc.*, 492 U.S. at 241). The Fifth Circuit also affirmed dismissal of Word of Faith's claims under § 1985(3) of the Ku Klux Klan Act on the ground that Word of Faith failed to allege that defendants were motivated by racial animus. The court of appeals concluded: "We decline the Church's invitation to extend the reach of section 1985(3) to include conspiracies motivated by religious, as opposed to racial, animus." 90 F.3d at 124, Pet. App. at 14a.[5]

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[5] Because the district court assessed Word of Faith's complaints on defendants' Rule 12(b)(6) motions, the courts below were required to—and did (Pet. App. at 9a, 19a)—assume that Word of Faith's allegations were true. For example, a central feature of Word of Faith's complaints is the allegation that defendants stole prayer requests and planted them in the trash. Such allegations—and virtually all others—have been shown to be false in Tilton's libel suit against ABC. After extensive dis-

SUMMARY OF ARGUMENT

In the wake of the ABC *PrimeTime* reports that were critical of him, televangelist Robert Tilton has litigated and lost libel and civil rights claims against ABC and the Trinity Foundation. In this action, commenced by the church he controls, Tilton pursues additional claims based on the same ABC broadcasts brought pursuant to the Ku Klux Klan Act and RICO. All of Word of Faith's claims were properly dismissed by the district court, and that dismissal was properly affirmed by the Fifth Circuit.

With respect to Word of Faith's claims under § 1985(3) of the Ku Klux Klan Act, Word of Faith now asks this Court to hold for the first time that a private conspiracy motivated by

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covery, the district court in that case granted ABC's motion for summary judgment. With respect to the allegation of stolen prayer requests, the district court found:

> Plaintiff also claims that the reports were false because the prayer requests were stolen and then planted in the trash dumpsters. Discovery, however, has failed to uncover any factual basis for the allegations that Defendants stole and planted the prayer requests in the trash dumpsters or in fact suspected that others stole and planted the prayer requests in the trash dumpsters.

905 F. Supp. at 1530-31. Accordingly, even if Word of Faith's complaints in this case had survived defendants' Rule 12(b)(6) motions, they would have been subject to dismissal on summary judgment motions.

Additionally, because Word of Faith and Tilton are in privity, Word of Faith's action would have been subject to dismissal under the doctrines of *res judicata* and collateral estoppel in light of the dismissal of Tilton's other actions against ABC and against the Trinity Foundation. *See Southwest Airlines Co.* v. *Texas International Airlines, Inc.*, 546 F.2d 84, 95 (5th Cir.), *cert. denied*, 434 U.S. 832 (1977); *Aerojet-General Corp.* v. *Askew*, 511 F.2d 710, 719 (5th Cir.), *cert. denied*, 423 U.S. 908 (1975). Because Word of Faith's complaints failed to state a claim, and because the district court ruled before the Oklahoma federal court had dismissed Tilton's suit against ABC, the *res judicata* and collateral estoppel issues were not addressed by the court of appeals below. (90 F.3d at 124; Pet. App. at 15a)

religious animus is actionable under § 1985(3). In so doing, Word of Faith mischaracterizes to the point of misrepresentation this Court's prior decisions in *Bray* v. *Alexandria Women's Health Clinic*, 506 U.S. 263 (1993), and *United Brotherhood of Carpenters & Joiners of America, Local 610, AFL-CIO* v. *Scott*, 463 U.S. 825 (1983). In those decisions, this Court not only declined to extend the reach of § 1985(3) beyond conspiracies motivated by racial animus, but it also established that private conspiracies to infringe First Amendment rights are not actionable under § 1985(3). Word of Faith's attempt to circumvent this Court's decisions in *Bray* and *Carpenters* should be rejected.

With respect to Word of Faith's claims under RICO, Word of Faith also mischaracterizes the decision of the Fifth Circuit, claiming that the court created a new test to assess a "pattern" under RICO. In fact, the Fifth Circuit properly applied the test established by this Court in *H.J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989), to the facts alleged by Word of Faith and found that the allegations were insufficient to satisfy the *H.J.* "pattern" requirement. By citing cases from other circuits in which courts have found the "pattern" requirement satisfied, petitioners argue that there is a split between the circuits. In fact, such decisions merely reflect different outcomes reached under *H.J.* based on different factual allegations. Such differing results do not warrant a grant of a writ of certiorari. *See* Supreme Court Rule 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law.").

REASONS FOR DENYING THE WRIT

I.

THE DISMISSAL OF PETITIONERS' SECTION 1985(3) CLAIM WAS CONSISTENT WITH AND REQUIRED BY THIS COURT'S DECISIONS AND PRESENTS NO QUESTION WORTHY OF THE EXERCISE OF THIS COURT'S JURISDICTION

Petitioners claim that this Court should grant certiorari to clarify whether § 1985(3) applies to conspiracies motivated by religious animus. (Pet. at 12-17) Urging that this Court's decisions in *Bray* v. *Alexandria Women's Health Clinic*, 506 U.S. 263 (1993), *United Brotherhood of Carpenters & Joiners of America, Local 610, AFL-CIO* v. *Scott*, 463 U.S. 825 (1983), and *Griffin* v. *Breckenridge*, 403 U.S. 88 (1971), established that § 1985(3) does extend beyond the protection of racially-motivated conspiracies, petitioners disingenuously urge that this case presents a unique opportunity to make clear that a private, religious-based conspiracy is actionable under the statute.

For petitioners to maintain that this Court "has held that § 1985(3) is *not* limited to racially motivated conspiracies" (Pet. at 12) and that the Court has never "rejected or retreated" from its view that § 1985(3) encompasses "other-than-race class-based conspiracies" (Pet. at 13) is a blatant misrepresentation of this Court's decisions. This Court has never so held.[6] While the question of whether § 1985(3) *could* be interpreted to extend to private conspiracies motivated by religious animus is one that spawned considerable debate and disagreement following this Court's decision in *Griffin*, to suggest that it was not resolved by the decisions in *Carpenters* and *Bray* so completely ignores the fundamental holdings of those cases as to border on the frivolous.

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[6] *See Griffin*, 403 U.S. at 102 n.9; *Carpenters*, 463 U.S. at 835-37; *Bray*, 506 U.S. at 269.

As both *Carpenters* and *Bray* held, although § 1985(3) applies to private conspiracies, *see Griffin*, 403 U.S. at 101, it only may do so where the particular right at issue is constitutionally protected against not only government but also private encroachment. *Bray*, 506 U.S. at 267-68, 278; *Carpenters*, 463 U.S. at 833. As the *Bray* Court noted:

> There are few such rights (we have hitherto recognized only the Thirteenth Amendment right to be free from involuntary servitude, and, in the same Thirteenth Amendment context, the right of interstate travel).

506 U.S. at 278.

Petitioners' claim here is based on their allegation that defendants conspired to deprive them and their members of their rights guaranteed by the First Amendment to the free exercise of religion. (Pet. App. at 221a ¶ 1)[7] But that right—as fundamental and important as it and the other First Amendment rights assuredly are—is only enforceable against the state. It does not protect against private encroachment. *See Bray*, 506 U.S. at 278; *Carpenters*, 463 U.S. at 833. To suggest, as petitioners do, that this Court's decisions have left open the question of whether private conspiracies to violate First Amendment rights are actionable under § 1985(3) is simply to ignore their very holdings.

Petitioners urge that this Court should grant a writ of certiorari because the decision below is "contrary to the clear legislative history of the [Ku Klux Klan Act]," citing the remarks of Senator Edmunds on the Senate floor in 1871. (Pet. at 13) Petitioners misleadingly suggest that this Court has attributed great significance to Senator Edmunds' remarks

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[7] Although their complaint made reference to various investigations of Tilton conducted by government agencies, petitioners did not allege that any government agencies or actors were members of the alleged conspiracy to deprive them of their First Amendment rights. (Pet. App. at 220a-253a) Petitioners' allegations concerning government investigations do not alter the application of *Bray* to bar their claims. *See Tilton* v. *Richardson*, 6 F.3d 683, 687 (10th Cir. 1993), *cert. denied*, 510 U.S. 1093 (1994).

by making "specific reference" to them in *Griffin*, *Carpenters* and *Bray*. (Pet. at 13) While the holdings of these cases surely govern over the snippets of legislative history cited in them, it is in any event the case that in *Carpenters* the Court considered the very argument made by petitioners here and refused to rely upon Senator Edmunds' remarks at all. After noting that the remarks were made on the Senate floor, this Court explained:

> The provision that is now § 1985(3), however, originated in the House. The narrowing amendment, which changed § 1985(3) to its present form, was proposed, debated, and adopted there, and the Senate made only technical changes to the bill. Senator Edmunds' views, since he managed the bill on the floor of the Senate, are not without weight. But we were aware of his views in *Griffin*, 403 U.S., at 102 n.9, and still withheld judgment on the question whether § 1985(3), as enacted, went any farther than its central concern—combatting the violent and other efforts of the Klan and its allies to resist and to frustrate the intended effects of the Thirteenth, Fourteenth, and Fifteenth Amendments. Lacking other evidence of congressional intention, we follow the same course here.

463 U.S. at 837.[8]

In a final effort to invoke this Court's certiorari jurisdiction, petitioners predictably invoke the specter of a conflict between the circuit courts of appeals. Petitioners maintain that other circuits "interpret[ ] § 1985(3) to reach conspiracies based on religious bigotry." (Pet. at 13) The conflict cited by petitioners is illusory, however, because decisions of some of the circuits referred to by petitioners do not support their

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[8] Although petitioners claim the Court made "specific reference" to Senator Edmunds' remarks in *Bray*, petitioners cite only to the concurring and dissenting opinions. (Pet. at 13) Justice Scalia's opinion for the Court made no reference to Senator Edmunds' remarks.

claims at all, and others can no longer be considered definitive in light of this Court's decisions in *Carpenters* and *Bray*.[9]

For example, in support of their contention that the Fifth Circuit's decision conflicts with the law of other circuits, petitioners rely on the Tenth Circuit's decision in *Taylor* v. *Gilmartin*, 686 F.2d 1346 (10th Cir. 1982), *cert. denied*, 459 U.S. 1147, 463 U.S. 1229 (1983). In *Taylor*, decided before this Court's decisions in *Carpenters* and *Bray*, the Tenth Circuit reversed a dismissal of a § 1985(3) claim alleging a conspiracy to violate the plaintiff's "first amendment right to freely practice his religion" that was motivated by "animus against religious minorities." 686 F.2d at 1358. In *Tilton* v. *Richardson*, 6 F.3d 683 (10th Cir. 1993), *cert. denied*, 510 U.S. 1093 (1994), however, (which petitioners relegate to a footnote (Pet. at 15 n.36)) the Tenth Circuit reexamined *Taylor* in the light of this Court's intervening decisions in *Carpenters* and *Bray* and affirmed dismissal of Tilton's § 1985(3) claim based on allegations of religious animus. The Tenth Circuit explained:

> *Taylor* was decided in 1982, nearly one year prior to *Carpenters*, and well before *Bray*. *Carpenters* enunciates the principle that § 1985(3) does not apply to private conspiracies unless they interfere with rights that are protected against private, as well as official, encroachment. The issue of whether § 1985(3) covers private conspiracies aimed at rights that are by definition only applicable to public encroachment was not decided in *Taylor*, and to the extent that it might have been, . . . *Carpenters* and *Bray* have effected a change in this evolving area of the law.

6 F.3d at 687.[10]

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[9] Although petitioners include the Court of Appeals for the District of Columbia in their discussion of the purported split in the circuits, petitioners cite no decision from that court, only a decision of a district court. (Pet. at 14-15)

[10] Tilton, represented by the same counsel who appears of counsel in this case, petitioned this Court for a writ of certiorari in *Tilton*

The pre-*Bray* (and sometimes pre-*Carpenters*) rulings of other circuits, as well, hardly provide a basis for a grant of the writ. Like the Tenth Circuit, some circuits have begun to reexamine and question their decisions in light of *Carpenters* and *Bray*. *Compare Action* v. *Gannon*, 450 F.2d 1227, 1235 (8th Cir. 1971) (upholding religious animus claim based on finding, contrary to subsequent decisions in *Carpenters* and *Bray*, that "First Amendment rights of freedom of assembly and worship" are protected against not only public but private

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v. *Richardson*. The questions presented by the petition in that case were:

1. Whether a conspiracy to deprive a pastor of his fundamental, natural right to exercise his religion freely is actionable under 42 U.S.C. § 1985(3) (1981).

2. Whether a conspiracy between private individuals to deprive a person of constitutional rights which conspiracy involves, affects or is aimed at influencing the activities of the state, is actionable under 42 U.S.C. § 1985(3) (1981).

3. Whether allegations of a conspiracy resulting in actions by the Texas Attorney General, allegations of a conspiracy intended to influence, pressure and induce action by state officials, and allegations of a conspiracy using state courts to further the aims of conspiracy sufficiently allege state involvement to support a claim under 42 U.S.C. § 1985(3) (1981) (Petition for Certiorari filed December 3, 1993 in No. 93-882; *see* 62 U.S.L.W. 3475 (U.S. Jan. 18, 1994) (No. 93-882)).

The Court denied Tilton's petition. 510 U.S. 1093 (1994).

Interestingly, in that petition Tilton asserted that the Tenth Circuit's decision created a conflict between the circuits "as to whether a conspiracy between private individuals to deny freedom of religion is actionable under 42 U.S.C. § 1985(3)." (Petition for a Writ of Certiorari in No. 93-882 at 7) Now, in this petition, petitioners claim that it is the Fifth Circuit's decision that stands alone and is "contrary to . . . every other circuit that has addressed the issue," including the Tenth Circuit. (Pet. at 14) Having previously argued that *Tilton* v. *Richardson* created a conflict by affirming dismissal of a religious animus § 1985(3) claim, petitioners now portray the decision as if it were a nullity, relegating it to a footnote and misrepresenting *Taylor* v. *Gilmartin* to be the law of the Tenth Circuit. (Pet. at 15 & 15 n.36)

action), *with Lewis* v. *Pearson Foundation, Inc.*, 917 F.2d 1077 (8th Cir. 1990) (en banc) (vacating *Lewis* v. *Pearson Foundation, Inc.*, 908 F.2d 318, 327 (8th Cir. 1990) (wherein dissenting judge had written that *Action* "is no longer viable because [its] reasoning was rejected by the Supreme Court in" *Carpenters*)), *cert. denied*, 507 U.S. 908 (1993). *Compare Ward* v. *Connor*, 657 F.2d 45 (4th Cir. 1981), *cert. denied*, 455 U.S. 907 (1982), *with Buschi* v. *Kirven*, 775 F.2d 1240, 1258 (4th Cir. 1985) ("Measured by the construction given the statute in [*Carpenters*], it is doubtful that the expansive view of the statute reflected in [*Ward* and other cases] could be considered of continued precedential reliability.").

Other circuit court decisions relied upon by petitioners have rested as much on findings of racial animus as religious animus. *See Marlowe* v. *Fisher Body*, 489 F.2d 1057, 1060 (6th Cir. 1973) (noting district court holding that "prejudice against Jews is based upon race as well as religion"); *Action*, 450 F.2d at 1232 ("It seems clear from the facts in this case that the defendants were stimulated to disrupt the church services by racial and economic motives."); *see also Blank* v. *Heineman*, 771 F. Supp. 1013, 1017 (D. Neb. 1991) (dismissing claim of evangelical Christians based on religious animus, distinguishing *Action* as a case involving a racially motivated conspiracy).

Finally, with respect to the Second Circuit, while observing that "the judicial landscape of § 1985(3) was radically altered" by *Bray*, *Town of West Hartford* v. *Operation Rescue*, 991 F.2d 1039, 1045 (2d Cir.), *cert. denied*, 510 U.S. 865 (1993), that court has not yet had occasion to reexamine its religious animus precedents in light of *Bray*. Although *LeBlanc-Sternberg* v. *Fletcher*, 67 F.3d 412 (2d Cir. 1995), *cert. denied*, 116 S. Ct. 2546 (1996), was decided after *Bray*, in that case the Second Circuit addressed a conspiracy claim asserted against a local government and its officials, not a private conspiracy. The Second Circuit has not yet considered the extent to which its precedents are consistent with *Carpenters* and *Bray*.

In sum, this Court's decisions in *Carpenters* and *Bray* make clear that petitioners' complaint cannot state a claim under § 1985(3). To the extent that any of the circuit court decisions cited by petitioners suggest to the contrary, those circuits should be given the opportunity to reassess the continuing validity of their decisions in light of *Carpenters* and *Bray*. As the foregoing demonstrates, each of the circuits that has had the opportunity to do so has clearly understood and applied the holdings of this Court.

II.

THE COURT OF APPEALS' AFFIRMANCE OF THE DISMISSAL OF PETITIONERS' RICO CLAIM PRESENTS NO QUESTION WORTHY OF THIS COURT'S REVIEW

A. The Courts Below Properly Applied This Court's Decision in *H.J. Inc.*

With respect to the dismissal of its claims under RICO, Word of Faith asserts that the decision below in some way contravenes this Court's decision in *H.J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989). (Pet. at 18-22) In *H.J.*, this Court addressed the "pattern" requirement of RICO, holding that in order to satisfy the "pattern" element a RICO plaintiff "must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." 492 U.S. at 239. In dismissing Word of Faith's RICO claim, the courts below properly applied *H.J.*, correctly determining that Word of Faith did not plead a " 'continuity of racketeering activity, or its threat.' " 90 F.3d at 123, Pet. App. at 13a (quoting *H.J.*, 492 U.S. at 241).

Word of Faith claims that in its decision below the Fifth Circuit "resurrect[ed]" the restrictive and inflexible "multiple scheme" standard rejected in *H.J.* as the touchstone for pattern continuity. (Pet. at 19) The Fifth Circuit has never

subscribed to that or any other restrictive RICO pattern requirement,[11] and this case is no exception.

The court of appeals faithfully applied the *H.J.* analysis, citing that ruling no fewer than ten times in its pattern ruling. (90 F.3d at 122-23; Pet. App. at 10a-13a) In its opinion, the concepts of open-ended and closed period continuity set forth in *H.J.* and this Court's articulation of congressional concerns are recounted at length. (*Id.*) Also relied upon were three Fifth Circuit decisions with facts analogous to this case. In each of those cases, the Fifth Circuit had determined that a single, discrete and otherwise lawful commercial transaction was complete and presented an insufficient threat of repetition to establish pattern continuity. Two of those cases, *In re Burzynski*, 989 F.2d 733 (5th Cir. 1993), and *Calcasieu Marine National Bank* v. *Grant*, 943 F.2d 1453, 1463-64 (5th Cir. 1991), feature extensive quotations from *H.J.* in their analyses of pattern continuity and follow its principles closely. The same continuity concept was employed in the third case, *Delta Truck & Tractor, Inc.* v. *J.I. Case Co.*, 855 F.2d 241, 244 (5th Cir. 1988), *cert. denied*, 489 U.S. 1079 (1989), which, although predating *H.J.*, is entirely consistent with *H.J.*'s approach.

Applying *H.J.* and its own decisions reflecting *H.J.*'s teaching, the Fifth Circuit concluded that respondents' newsgathering concerning Tilton and his church lacked sufficient continuity to constitute a RICO pattern. The court held that "[t]he alleged acts were all part of a single, lawful endeavor—namely the production of television news reports concerning a particular subject," and did not present a continued threat of illegal activity. (90 F.3d at 123-24; Pet. App. at 13a)

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[11] As noted by this Court in *H.J.*, the Fifth Circuit had rejected the multiple scheme standard years before *H.J.* and adhered to a liberal pattern pleading requirement of only two predicate acts before that test was held insufficient in *H.J. H.J. Inc.*, 492 U.S. at 235 n.2 (citing *R.A.G.S. Couture, Inc.* v. *Hyatt*, 774 F.2d 1350, 1355 (5th Cir. 1985)); *id.* at 236-37.

Word of Faith takes the Fifth Circuit to task for concluding that the alleged predicate acts constituted a "single, lawful endeavor." Maintaining that *H.J.* in some way prohibits the Fifth Circuit's analysis, Word of Faith recites the word "single" as if this Court's rejection in *H.J.* of an inflexible and overly restrictive "multiple scheme" test merely paved the way for an equally inflexible rule that entitles a plaintiff to maintain a claim so long as any scheme can be alleged. Nothing could be further from the essential lesson of *H.J.*

The central teaching of *H.J.* is that the concept of pattern, and particularly pattern continuity, may not be reduced to any rigid or fixed rule. 492 U.S. at 241. What is required, rather, is a flexible approach to the analysis of an alleged RICO pattern, so that "[w]hether the predicates proved establish a threat of continued racketeering activity depends on the specific facts of each case." *Id.* at 242. The need for flexibility and case-by-case review is paramount:

> The limits of the relationship and continuity concepts that combine to define a RICO pattern, and the precise methods by which relatedness and continuity or its threat may be proved, cannot be fixed in advance with such clarity that it will always be apparent whether in a particular case a "pattern of racketeering activity" exists.

H.J., 492 U.S. at 243.

H.J. does not suggest, much less hold, that every "single"—or even multiple—scheme or transaction will suffice to state a RICO claim. It held that some may and some may not. Moreover, the factors considered by the Fifth Circuit—that the transaction in question was "single", "discrete", and "otherwise lawful"—are, *on their face*, highly relevant to the pattern analysis mandated by *H.J.* Under the ordinary language analysis this Court has repeatedly used in *H.J.* and other RICO cases,[12] it matters a great deal that "single" and "dis-

[12] *E.g.*, *H.J.*, 492 U.S. at 238; *National Organization for Women, Inc.* v. *Scheidler*, 510 U.S. 249, 260-61 (1994); *United States* v. *Turkette*, 452 U.S. 576, 580-81 (1981).

crete" are virtual antonyms of the word "pattern". If, as this Court held in *H.J.*, the central question is whether the alleged acts "amount to or pose a threat of continued *criminal* activity," 492 U.S. at 239 (emphasis added), it likewise matters that the acts in question are "otherwise lawful."

Guided by the broad precepts this Court "beg[a]n to delineate" in *H.J.*, 492 U.S. at 241, the district court and the Fifth Circuit below undertook precisely the kind of case-specific factual evaluation contemplated in *H.J.* in their review of Word of Faith's claim. Petitioners' tortured reading of the ruling below cannot translate that decision into a rejection of this Court's decision in *H.J.*

B. No Split in the Circuits is Created by the Fact that Other Courts Have Found Different Facts to Constitute RICO "Patterns"

Seeking yet again to demonstrate a split in the circuits, Word of Faith clings to a slender reed of dicta, set forth in a footnote and articulated in the conditional tense, in the Fifth Circuit's opinion. In its footnote, the Fifth Circuit observed that "[t]he law in other circuits *might* have allowed this case to proceed further." (90 F.3d at 123 n.4; Pet. App. at 13a n.4) (emphasis added)[13] That terse observation provides no occasion to revisit this Court's decision in *H.J.*

The Fifth Circuit characterized its own rulings as "consistently different" from cases in the Sixth, Seventh and Ninth Circuits.[14] (90 F.3d at 123 n.4; Pet. App. at 13a n.4) These cases involved forgery (*Ticor*), embezzlement (*Busacca*),

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[13] Word of Faith mischaracterizes the Fifth Circuit's footnote as an open concession that this action "*would likely have been* allowed to proceed under the law of other circuits." (Pet. at 22 (citation omitted; emphasis added))

[14] *Shields Enterprises, Inc.* v. *First Chicago Corp.*, 975 F.2d 1290 (7th Cir. 1992); *Ticor Title Insurance Co.* v. *Florida*, 937 F.2d 447 (9th Cir. 1991); *United States* v. *Busacca*, 936 F.2d 232 (6th Cir.), *cert. denied*, 502 U.S. 985 (1991); *Ikuno* v. *Yip*, 912 F.2d 306 (9th Cir. 1990).

extortion (*Shields*) and soliciting investments in a fraudulent commodities trading corporation (*Ikuno*). Applying *H.J.* in each case, the courts in those cases determined that the defendants' criminal acts carried an implicit threat of continuity because they were part of defendants' regular way of doing business or accomplishing goals before their enterprises were put to a stop. *Shields*, 975 F.2d at 1295-96; *Ticor*, 937 F.2d at 450-51; *Busacca*, 936 F.2d at 237-38; *Ikuno*, 912 F.2d at 309. In other words, the activities in those cases were neither "single", "discrete", nor "otherwise lawful". Despite the different outcomes, these decisions and those of the Fifth Circuit are in complete harmony in their fidelity to the *H.J.* approach to pattern analysis. The different outcomes are attributable to the dissimilar facts of the cases and a necessary consequence of the careful, case-by-case evaluation required by *H.J.*[15]

Indeed, in *Shields* itself, the Seventh Circuit distinguished its finding of a "pattern" in that case from four earlier cases which "involv[ed] only one scheme directed toward achieving one goal." 975 F.2d at 1295 (citing *J.D. Marshall Int'l, Inc.* v. *Redstart, Inc.*, 935 F.2d 815, 821 (7th Cir. 1991); *United States Textiles, Inc.* v. *Anheuser-Busch Cos., Inc.*, 911 F.2d 1261, 1268-69 (7th Cir. 1990); *Olive Can Co., Inc.* v. *Martin*, 906 F.2d 1147, 1151 (7th Cir. 1990); *Sutherland* v. *O'Malley*, 882 F.2d 1196, 1204-05 (7th Cir. 1990)). In each of those four cases the Seventh Circuit applied this Court's analysis from *H.J.* and, stressing the fact-specific nature of the inquiry, concluded that there existed insufficient pattern continuity to state a RICO claim given the short-lived, focused

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[15] In the courts below, petitioners cited newspaper reports and other lawsuits of parties unhappy with various ABC news reports over the years to argue that petitioners' allegations constituted ABC's "regular way of doing business." The Fifth Circuit held:

> Pleading the mere existence of lawsuits is not the same as pleading the facts that demonstrate predicate illegal acts as the defendant's regular way of doing business. The Church has not in this respect sufficiently alleged a continuing threat of illegal activity by ABC.

(90 F.3d at 124: Pet. App. at 13a)

nature of the conduct at issue and the lack of evidence that the scheme would be repeated in the future. *Id.* As explained by the court in *U.S. Textiles*:

> In *H.J. Inc.*, the Supreme Court held that a plaintiff or prosecutor need not prove multiple schemes to show a pattern for purposes of the RICO statute. This, however, does not mean that the fact that there is only one scheme involved is of no consequence to the "pattern" determination. To the contrary, "[w]hile a RICO pattern can be established, in some circumstances, by proof of a single scheme, it is not irrelevant, in analyzing the continuity requirement, that there is only one scheme."

911 F.2d at 1269 (citations omitted).

Similarly, proceeding with the fact-specific analysis required by *H.J.*, the Sixth and Ninth Circuits, in decisions subsequent to those relied upon by petitioners, have reached the same conclusion the Fifth Circuit did here when faced with analogous allegations of a single, focused episode of allegedly improper activities with no suggestion of repetition. *Vild* v. *Visconsi*, 956 F.2d 560, 569-70 (6th Cir.) (allegations of marketing agreement scheme amounted "at best to a breach of contract with a single customer"), *cert. denied*, 506 U.S. 832 (1992); *Sever* v. *Alaska Pulp Corp.*, 978 F.2d 1529, 1535-36 (9th Cir. 1992) (retaliatory actions by employer amounted to single episode having a singular purpose). In *Sever*, the Ninth Circuit distinguished its earlier opinions in *Ticor* and *Ikuno* as inapplicable, stating that the conduct alleged in those cases "could not be characterized as a single episode with a single purpose which happened to involve more than one act taken to achieve that purpose." *Sever*, 978 F.2d at 1535 (citation omitted).[16]

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[16] The *Sever* court cited three earlier Ninth Circuit cases which reached the same conclusion on similar facts. *Id.* at 1535-36, citing *Medallion Television Enterprises, Inc.* v. *SelecTV of California, Inc.*, 833 F.2d 1360, 1364 (9th Cir. 1987), *cert. denied*, 492 U.S. 917 (1989) (no pattern where plaintiff fraudulently induced defendant to enter a tele-

As this Court anticipated in *H.J.*, courts' analyses of allegations of RICO patterns are highly fact specific. That some decisions of the courts of appeals have found allegations sufficient to satisfy the pattern requirement, while others have found other allegations insufficient, does not constitute a split in the circuits. The court below, along with all the other decisions relied upon by petitioners, applied the legal framework established by *H.J.* That different results were reached does not provide a basis for invocation of this Court's certiorari jurisdiction.

Finally, even if this Court were to conclude that, in an appropriate case, it would revisit *H.J.*, this would hardly be the case which lends itself to that reappraisal. The case is, at its core, a subterfuge—a libel case in disguise precisely because (as the Tenth Circuit has already held) there is no merit to the libel claim itself. If this Court were to remand this case to the district court, that court would in all likelihood dismiss the action based on principles of *res judicata* or collateral estoppel. *See supra*, p.5 n.5. Such a case, rooted in claims already determined to be without merit and on the very lip of being dismissed, is hardly worthy of plenary consideration by the Court.

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vision contract; "Once the [contract was entered into], the fraud, if indeed it was a fraud, was complete."); *Jarvis* v. *Regan*, 833 F.2d 149, 152-53 (9th Cir. 1987) (pattern requirement not satisfied by allegations that legal aid organizations committed three predicate acts of mail and wire fraud in obtaining a single federal grant to defray costs of opposing a ballot initiative); *Schreiber Distributing Co.* v. *Serv-Well Furniture Co.*, 806 F.2d 1393, 1399 (9th Cir. 1986) (pattern requirement not established where defendant had fraudulently obtained a single shipment of goods in violation of plaintiff's exclusive distribution agreement for lack of threat of continuing activity).

CONCLUSION

The petition for a writ of certiorari should be denied.

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Respectfully submitted,

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